Supreme Court, U.S.
FILED
JUL 8 1996
OFFICE OF THE CLERK

No. 96 34

In The

Supreme Court of the United States

October Term, 1995

ELLIS N. RATCLIFF, SR. and FRANCIS MAE TAYLOR,

Petitioners,

v.

WILLIAM M. DANIEL, ET AL.,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

EMILE C. ROLFS, III
Counsel of Record
VICTOR A. SACHSE, III
JAMES R. CHASTAIN, JR.
BREAZEALE, SACHSE & WILSON, L.L.P.
One American Place, 23rd Floor
Post Office Box 3197
Baton Rouge, Louisiana
70821-3197
504-387-4000

CHARLES A. O'BRIEN, III
PERCY, PUJOL, O'BRIEN & WILEY
700 North Tenth Street, Suite 250
Post Office Box 3958
Baton Rouge, Louisiana
70801-3958
504-383-2608

Counsel for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

97 pp

QUESTION PRESENTED

On hearing of the jailers' motion for summary judgment, considering *inter alia* the opinions of two experienced forensic pathologists that the mark on the decedent's neck was consistent with homicide by strangulation with a rope or braided cord, and not consistent with suicide by hanging from a bed sheet as espoused by the jailers, were there genuine issues of material fact concerning the circumstances of the death and the training, supervision and policies for the operation of the jail which should have precluded summary judgment as to petitioners' claim pursuant to 42 U.S.C. § 1983.

PARTIES

Ellis N. Ratcliff, Sr.
Frances Mae Taylor
Willis M. Daniel
Scott Braud
Steven D. Neal
Randall W. Metz
Sphere Drake Insurance, PLC
St. Paul Fire & Marine (UK)
CNA Reinsurance of London, Ltd.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

AMENDMENTS TO CONSTITUTION, STATUTES AND FEDERAL RULES INVOLVED IN THIS CASE 2

STATEMENT OF THE CASE 5

REASONS FOR GRANTING THE WRIT 8

CONCLUSION 13

APPENDIX ..... App. 1

1. Ruling of the Fifth Circuit Court of Appeal ..... App. 1
2. Amended Judgment ..... App. 3
3. Oral Reasons for Ruling ..... App. 4
4. Photographs ..... App. 37
5. Map of Jail ..... App. 38
6. Deposition of Deputy Randall Metz ..... App. 39
7. Report and Deposition of Deputy Randall Metz ..... App. 41
8. Deposition of Dr. Alfredo Suarez ..... App. 47
9. Report of Dr. Alfredo Suarez ..... App. 61
10. Deposition of Dr. Emil Laga ..... App. 63
11. Deposition of Isaac Washington ..... App. 73

TABLE OF AUTHORITIES

Page

Cases

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986) 8

Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) 8

City of Canton v. Harris, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed. 2d 412 (1989) 12

Farmer v. Brennan, ___ U.S. ___, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994) 11

Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) 8

Valencia v. Wiggins, 981 F.2d 1440 (5th Cir. 1993), *cert. denied* 113 S.Ct. 2998, 125 L.Ed.2d 691 (1993) 11

Constitution, Statutes and Federal Rules

U.S. Const. amend. IV 2, 11

U.S. Const. amend. V 2, 11

U.S. Const. amend. VIII 2, 11

U.S. Const. amend. XIV 3, 11

28 U.S.C. § 1331 7

28 U.S.C. § 2154(1) 2

42 U.S.C. § 1983 ..... 1, 3, 7

U.S. Supreme Court Rule 13.1 1

Rule 56(c) of the Federal Rules of Civil Procedure 3

Rule 56(e) of the Federal Rules of Civil Procedure 4

PETITION FOR WRIT OF CERTIORARI

Ellis N. Ratcliff, Sr. and Francis Mae Taylor, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this proceeding on April 9, 1996, since the Fifth Circuit has departed from the accepted and usual course of judicial proceedings and sanctioned such a departure from the law such to warrant the exercise of this power.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit which gives rise to this petition is unpublished by order of the Fifth Circuit. It is reprinted in Appendix A herein ("App. A") at page A-1.

JURISDICTION

On May 12, 1995, the United States District Court for the Middle District of Louisiana entered an amended judgment granting the defendants' motion for summary judgment as to petitioners' civil rights claim pursuant to 42 U.S.C. § 1983. A notice of appeal was timely filed to the United States Court of Appeals for the Fifth Circuit. The Fifth Circuit affirmed the decision of the trial court on April 9, 1996. Pursuant to Supreme Court Rule 13.1, this petition has been filed within 90 days after entry of judgment.

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1254(1).

AMENDMENTS TO CONSTITUTION, STATUTES AND FEDERAL RULES INVOLVED IN THIS CASE

U.S. Const. amend. IV provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const. amend. V provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

U.S. Const. amend. VIII provides:

> "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

U.S. Const. amend. XIV § 1 provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. § 1983 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

Rule 56(c) of the Federal Rules of Civil Procedure provides:

> "The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages."

Rule 56(e) of the Federal Rules of Civil Procedure provides:

"Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party."

STATEMENT OF THE CASE

On Friday, Ellis Ratcliff, Jr. ("Ellis, Jr."), a young black man, borrowed a friend's car to travel to St. Francisville, Louisiana to assist other family members in preparing a grave site for his grandmother who had died earlier that week. They finished digging the grave between 4:00 p.m. and 5:30 p.m., and Ellis, Jr. immediately left to return home. While en route to Baton Rouge, traveling south on U.S. Highway 61, Deputy Glenn Daniel drove up behind Ellis, Jr. Deputy Daniel states in his deposition "something seemed out of place." Ellis, Jr. was wearing a bandana which, according to Deputy Daniel, most gang members wear. Deputy Daniel asked for a license plate check. The Sheriff's Office radioed back that the car had been reported stolen in Baton Rouge. Sheriff Deputies Randy Metz and Tommy Tubbs, and Officers Tommy Rabalais and Ellis Diaz of the St. Francisville Police Department responded to the call and pulled Ellis, Jr. over, charging him with possession of a stolen vehicle and driving without a license.

Ellis, Jr. was taken to the West Feliciana Parish Jail where he was booked in by Deputy Scott Braud. Deputy Braud filled out the requisite paperwork, including the West Feliciana Parish Receiving/Screening Form. Deputy Steven Neal was also on duty at the time. That night Ellis, Jr. was placed in the detox cell – the cell closest in proximity to the control booth at the jail, which contained large observation windows. He spent the night in this cell.

While in the cell, Ellis, Jr. was observed crying by Deputy Braud. Ellis, Jr., according to Deputy Braud, was

upset about not being able to attend his grandmother's funeral. Deputy Braud told Sheriff Willis Daniel how upset Ellis, Jr. was; Sheriff Daniel told Braud to keep a very close eye on him.

On Saturday, Ellis, Jr. was moved from the detox cell to Cell D, a closed cell at the end of the hallway. App. 38, Map. The door to this cell is solid metal with merely a peep window and slot in which to pass a food tray. Deputy Mark Daigle testified that he moved Ellis, Jr. at the instruction of Sheriff Daniel. Sheriff Daniel claims otherwise. Ellis, Jr. stayed in Cell D by himself until approximately 3:00 o'clock p.m., when Deputy Daigle transported him to the "lawyer's room" for interrogation by Deputy Metz. Why it was necessary to interrogate him when he was supposedly being held for Baton Rouge Police on a stolen motor vehicle charge is unknown. Deputy Metz spoke with Ellis, Jr. for approximately an hour, until 4:00 o'clock p.m., when he was returned to his cell. The cell doors lock automatically.

At approximately 4:40 p.m. that afternoon, an inmate, Marshall Newkirk, was passing out sandwiches for supper. According to a statement he later gave to investigating deputies, upon reaching Cell D, he noticed Ellis, Jr. "hanging – he was hanging from the light fixture – one foot was curled under and the other was flat on the floor. His left arm was on the bunk, his neck to the side." Although CPR was subsequently attempted by medical personnel and Deputy Braud, they were unable to resuscitate him. However, what transpired subsequently raises a tremendous question about what truly happened to Ellis, Jr.

Shortly after his death, at the request of the family, Dr. Alfredo Suarez, Chief of Pathology at Earl K. Long Memorial Hospital in Baton Rouge, Louisiana, examined the body of Ellis, Jr. He issued a report concluding that **the mode of death was not consistent with a bed sheet, but rather a braided cord or thin rope**. Further, he reported that the mark was horizontal, and not V-shaped, which is consistent with strangulation at the hands of another. In deposition, Dr. Suarez concluded that in his medical opinion, it was more likely a homicide than a suicide.

Dr. Emil Laga, the examining coroner, also concluded that the mark on Ellis, Jr.'s neck did not appear to be that of a sheet; he had never seen a sheet or cloth make a mark like that in 20 years. Thus, what the deputies contend occurred is not consistent with the medical evidence but, in fact, is contradicted by the medical evidence. If a jury would accept the medical evidence as to the cause of death, it would also be entitled to disbelieve all testimony of the deputies as to what they contend transpired.

Petitioners filed this action claiming a violation of Ellis, Jr.'s civil rights. The district court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The trial court granted summary judgment on the civil rights claim, 42 U.S.C. § 1983. The court of appeals affirmed this decision holding there is no genuine issue of material fact as to the claim against these defendants.

Petitioners believe this ruling is contrary to the law and evidence.

REASONS FOR GRANTING THE WRIT

I. The Fifth Circuit Opinion Directly Conflicts with Rule 56 of the Federal Rules of Civil Procedure and the Supreme Court Trilogy.

This Court has repeatedly concluded that a summary judgment is only proper when the pleadings, depositions, answers to interrogatories and admissions on file together with affidavits show that there is **no genuine issue as to any material fact** and that the moving party is entitled to a judgment as a matter of law. Rule 56 of the Federal Rules of Civil Procedure; *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). This Court stressed in *Anderson v. Liberty Lobby, Inc.*, supra that items such as credibility determinations, the weighing of evidence and the drawing of legitimate inferences from facts are jury functions, not those of a judge. The evidence of a nonmovant is to be believed and all justifiable inferences are to be drawn in his favor.

In responding to the motion for summary judgment, petitioners submitted evidence which suggests a violation of Ellis, Jr.'s constitutional rights. The court erred in granting summary judgment.

Dr. Alfredo Suarez subsequently viewed the body of Ellis, Jr. after his death. The body had already been autopsied by Dr. Emil M. Laga and embalmed at the Miller & Daughter Funeral Home. After inspecting the body of Ellis, Jr., Dr. Suarez issued a report dated October 17, 1991 wherein he concludes:

> **"I am not totally familiar with the circumstances of death but I can suggest that the mode of death and the material used is not consistent with bed sheets and rather of either a cord or thin rope."** (Emphasis added).
>
> App. 61, Suarez Report.

In his deposition he expounded upon this conclusion stating:

> "So in my opinion given to Mr. Guerriero, both orally and in writing, was that **there was no way this was sheets**. This is a pattern of a cord or a rope." (Emphasis added).
>
> App. 54, Suarez Deposition.

Dr. Suarez testified that in his 25 years of practice he has never seen a sheet make a mark like the one embedded in Ellis, Jr.'s neck. He noted the peculiar identifying features of the mark including that it is (1) a woven or twisted pattern in the deepest portion of the mark; (2) horizontal, measuring a half inch wide and a quarter inch deep; and (3) a very regular pattern. He contrasted these features to that of a sheet which makes an irregular and wide marking; the pressure of the sheet is typically sustained over a wider area of the neck and thus more difficult to detect. App. 53-60, Photographs; App. 37, Suarez Deposition. He concluded that the mode of death and the material used were not consistent with bed sheets but rather a cord or thin rope. App. 58-60, Suarez Deposition. The jury should hear this evidence and is entitled to disbelieve the deputies as to not only their contention that the instrumentality of death was a sheet but their entire testimony.

Dr. Emil Laga concurred with this opinion stating "to me, it does not look like a sheet that gave the imprint here on the – well, not a sheet that I could manipulate such as to give me, you know, a convincing replica imprint on the skin of this person." He testified that in his over 20 years of experience he has never seen a sheet or cloth make a mark like this. App. 71, Laga Deposition.

Finally, the most critical evidence is that the mark on Ellis, Jr.'s neck was **horizontal and not V-shaped**. Dr. Suarez stated that this sort of mark is seen in **strangulations** and not suicides. It defies science and logic to conclude that one could commit suicide, whether by sheet or rope, and leave a horizontal marking on the neck. Dr. Suarez concluded that this was more likely a **homicide rather than a suicide and the jury should be entitled to draw the same conclusion.** App. 58, Suarez Deposition.

This case is replete with extremely serious issues of fact. The court was in error in granting a summary judgment.

II. If the Jury Accepts the Doctors' Testimony that it was not a Suicide but a Homicide, Additional Questions of Fact Exist as to Defendants' Liability.

Ellis, Jr. died while in the jail cell, behind lock and key. Deputies Braud and Neal were on duty at the time of his death. Deputy Metz had allegedly just left the jail after putting Ellis, Jr. back into his jail cell; Ellis, Jr. was behind lock and key. The doors lock automatically. App. 40, Metz Deposition. The door is solid metal (as opposed to only bars) with only a peep window and tray slot for

food; one could not access Ellis, Jr. except by opening the door. It is undisputed that he had no braided cord or rope in his jail cell.

Accepting these facts, it is a reasonable inference that only one with the ability to open the door (i.e., a deputy) could have permitted access to Ellis, Jr. to either personally apply a rope to his neck or allow a rope to be put around his neck. Moreover, the jail was in the control of defendants Braud and Neal (and possibly Metz) at the time of the incident. App.42, Metz Report and Deposition. If the jury accepts the conclusion that Ellis, Jr. did not hang himself with a bed sheet, but was strangled to death with a rope or cord around his neck, whether or not they conclude that his death was intentional by the defendants, the only logical inference is that these defendant deputies were involved.

Even if forceful placing of a rope around his neck was not intended to kill him but only to frighten or otherwise discipline him for whatever reason, it was unacceptable treatment and triggers a constitutional violation. The Eighth Amendment of the Constitution imposes a duty upon jail officials to provide humane conditions of confinement, to insure that a pretrial detainee, even more than a convicted inmate, receives adequate food and take reasonable measures to guarantee his safety. *Farmer v. Brennan*, ___ U.S. ___, 114 S.Ct. 1970 (1994), 128 L.Ed.2d 811. Further, whether pursuant to the Fourth, Fifth or Fourteenth Amendment, a pretrial detainee more than a convict has a constitutional right to be free from such unjustified force. *Valencia v. Wiggins*, 981 F.2d 1440 (5th Cir. 1993), *cert. denied* 113 S.Ct. 2998, 125 L.Ed2d 691 (1993).

Further, Isaac Washington, who was jailed at the West Feliciana facility with Ellis, Jr., testified that on that Saturday afternoon, most of the inmates were in the bullpen when they heard a loud beating noise – a "tussling" or something emanating from one of the cells behind them. App. 74-76, Washington Deposition. Although Washington could not identify which cell the noise was coming from, this testimony, when taken with that of the medical experts lends support to the excessive force theory. This is certainly suspect.

As the only living persons available, the sheriff and defendant deputies should stand before the jury and explain this incident. Regardless of how the application of the rope or cord occurred, the deputies on duty at the time of the incident were objectively unreasonable if they permitted the use of excessive force which caused the death of Ellis, Jr.

Moreover, petitioners submitted evidence that this was not an isolated event. Washington further testified that the trustees were permitted to discipline "or beat up" prisoners. Trustees roughed people up to settle them down while incarcerated. App. 76-79, Washington Deposition. The jury is entitled to hear and accept Mr. Washington's testimony. This evidence suggests a genuine issue of fact as to whether Sheriff Daniel had actual/constructive knowledge of this behavior at his jail and/or whether this type behavior was a custom or policy. *City of Canton v. Harris*, 489 U.S. 378, 109 S.Ct. 1197, 103 L.Ed. 2d 412 (1989).

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

EMILE C. ROLFS, III
Counsel of Record
VICTOR A. SACHSE, III
JAMES R. CHASTAIN, JR.
BREAZEALE, SACHSE & WILSON, L.L.P.
One American Place, 23rd Floor
Post Office Box 3197
Baton Rouge, Louisiana
70821-3197
504-387-4000

CHARLES A. O'BRIEN, III
PERCY, PUJOL, O'BRIEN & WILEY
700 North Tenth Street, Suite 250
Post Office Box 3958
Baton Rouge, Louisiana
70801-3958
504-383-2608

Counsel for Petitioners

UNITED STATES COURT OF APPEALS
U.S. COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 95-30654

ELLIS N. RATCLIFF, SR.,

Plaintiff-Appellant,

versus

WILLIAM M. DANIEL; SCOTT BRAUD; STEVE NEAL; RANDY METZ; JOHN STERLING; JOHN DOE; SPHERE DRAKE INSURANCE, PLC; ST. PAUL FIRE & MARINE INSURANCE COMPANY (U.K.) LTD.; CNA REINSURANCE,

Defendants-Appellees,

versus

FRANCES MAE TAYLOR

Intervenor Plaintiff-Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana
(92-CV-788)

(Filed April 9, 1996)

Before REAVLEY, GARWOOD and JOLLY, Circuit Judges.

PER CURIAM:*

After considering the argument of counsel and the briefs and record, this Court concludes that the record contains no summary judgment evidence sufficient to create a fact issue upon which a finding of constitutional violation on the part of any of the defendants could properly rest.

Accordingly, the judgment of the district court is

AFFIRMED.

---

* Pursuant to Local Rule 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ELLIS N. RATCLIFF — CIVIL ACTION

VERSUS — NO. 92-788-A

WILLIAM DANIEL, ET AL

AMENDED JUDGMENT

(Filed May 13, 1995)

Pursuant to Rule 60(a), Federal Rules of Civil Procedure, the Judgment entered herein on May 9, 1995, is hereby AMENDED as follows:

For the oral reasons assigned:

IT IS ORDERED ADJUDGED AND DECREED that the motions for summary judgment filed on behalf of defendants are hereby GRANTED and this action is hereby DISMISSED; all state law claims are hereby DISMISSED, WITHOUT PREJUDICE.

Baton Rouge, Louisiana, May 12, 1995.

/s/ John V. Parker
JOHN V. PARKER,
CHIEF JUDGE
MIDDLE DISTRICT
OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ELLIS N. RATCLIFF, SR.	*	CIVIL ACTION
PLAINTIFF	*	NUMBER 92-788-A
	*	
VERSUS	*	
WILLIAM M. DANIEL	*	MAY 5, 1995
	*	HONORABLE JOHN V.
DEFENDANT.	*	PARKER
	*	

TRANSCRIPT OF THE ORAL ARGUMENT IN THE ABOVE ENTITLED AND NUMBERED CIVIL ACTION.

APPEARANCES:

FOR THE PLAINTIFF:

EMILE C. ROLFS, III
JAMES R. CHASTAIN, JR.

FOR THE DEFENDANTS:

CRAIG E. FROSCH
LOUIS LEONARD GALVIS

REPORTED BY:

BARBARA DAVIS PHIPPS, C.C.R.
OFFICIAL COURT REPORTER
U.S. COURTHOUSE
777 FLORIDA STREET
BATON ROUGE, LA 70801
504-389-0359

---

*PROCEEDINGS RECORDED BY MECHANICAL STE-*NOGRAPHY; TRANSCRIPT PRODUCED BY COMPUTER WORD PERFECT SOFTWARE AND STORED IN ASCII FORMAT.

[p. 2] (CA 92-788 ELLIS RATCLIFF VERSUS WILLIAM DANIEL)

THE COURT: IT HAS BEEN A LONG TIME GETTING THIS MOTION UP TO ORAL ARGUMENT, BUT I DO WANT TO HEAR THE ARGUMENT ON IT. SO LET'S PROCEED, COUNSEL.

MR. FROSCH: THANK YOU, YOUR HONOR. CRAIG FROSCH, YOUR HONOR, ON BEHALF OF THE SHERIFF AND HIS DEPUTY.

AS YOU KNOW THIS CASE INVOLVES A DEATH AT THE WEST FELICIANA PARISH JAIL. THE DECEDENT WAS ARRESTED, I BELIEVE IT WAS ON A FRIDAY AFTERNOON FOR POSSESSION OF A STOLEN VEHICLE AND WAS TAKEN TO THE JAIL THAT AFTERNOON.

ON THE NIGHT OF THE ARREST HE WAS OBSERVED BY VARIOUS SHERIFF DEPUTIES AS CRYING. HE SPENT THE NIGHT IN A DETOX CELL WHICH IS CLOSEST TO THE GUARD STATION AND EASILY OBSERVABLE BY THE GUARD STATION.

THE NEXT MORNING HE WAS TRANSFERRED TO ANOTHER CELL WHICH IS FARTHER AWAY FROM THE GUARD STATION. TO MY KNOWLEDGE NONE OF THE DEPUTIES OBSERVED HIM CRYING ON THAT SATURDAY. THERE IS SOME TESTIMONY THAT ONE

OF THE OTHER INMATES OBSERVED HIM AND HIS EYES WERE RED AS IF HE HAD BEEN CRYING, BUT TO MY KNOWLEDGE THERE IS NO TESTIMONY FROM THE DEPOSITIONS OR OTHERWISE THAT HE WAS CRYING ON SATURDAY.

IN THE AFTERNOON AT ABOUT THREE O'CLOCK HE WAS TAKEN INTO AN INTERROGATION ROOM. HE WAS INTERROGATED BY THE ARRESTING OFFICER. HE SIGNED A STATEMENT SAYING THAT HE DID NOT KNOW THAT THE CAR WAS STOLEN, THAT A FRIEND HAD LENT IT TO HIM.

[p. 3] ABOUT FOUR OR FOUR-THIRTY THAT AFTERNOON, HE WAS BROUGHT BACK TO HIS CELL WHICH WAS FARTHER AWAY FROM THE GUARD STATION AND ABOUT FOUR-FORTY IN THE AFTERNOON HE WAS DISCOVERED HANGING BY A BED SHEET FROM A LIGHT FIXTURE IN HIS CELL.

THE GUARDS WERE SUMMONED. THEY WENT TO THE CELL, CUT HIM DOWN. THEY TRIED TO RESUSCITATE HIM. HE WAS TAKEN TO THE HOSPITAL, BUT UNFORTUNATELY HE DIED.

THE AUTOPSY SAID THAT THE MARK AROUND HIS NECK DID NOT APPEAR TO BE FROM A SHEET, BUT IT COULD HAVE BEEN FROM A SHEET. THERE WERE NO MARKS OF A STRUGGLE ON THE DECEDENT'S BODY.

THE PLAINTIFF AS THE DECEDENT'S FATHER FILED THIS SUIT UNDER SECTION 1983 OF THE CIVIL RIGHTS ACT ALLEGING THAT THE DECEDENT WAS DEPRIVED OF MEDICAL CARE WHILE HE WAS IN

JAIL. THERE IS SOME INDICATION THAT THE PLAINTIFF IS POSSIBLY CLAIMING THAT PERHAPS THE OTHER INMATES DID THIS TO THE DECEDENT.

THERE IS SOME IMPLICATIONS OR INNUENDO THAT PERHAPS ONE OF THE GUARDS DID IT. THERE IS ABSOLUTELY NO EVIDENCE WHICH WOULD INDICATE EITHER THAT AN INMATE DID – ANOTHER INMATE DID THIS OR ANOTHER, A GUARD DID THIS.

THE COURT: WHO WAS PRESENT AT THE TIME OF THE INTERROGATION AND AT THE TIME THE DECEDENT WAS BROUGHT BACK TO HIS CELL AND WHO BROUGHT HIM BACK?

MR. FROSCH: I BELIEVE IT WAS A DEPUTY METZ WHO WAS [p. 4] THE ARRESTING OFFICER CONDUCTED THE INTERROGATION AND I BELIEVE THAT IT WAS DEPUTY BREAUX WHO BROUGHT HIM BACK TO THE CELL.

I THINK THERE IS SOME CONFUSION AS TO WHETHER DEPUTY METZ OR ANOTHER DEPUTY BROUGHT HIM FROM THE CELL TO THE INTERROGATION.

THE COURT: WELL, THERE WAS NOTHING WRONG WITH HIM AT THAT TIME.

MR. FROSCH: THAT'S CORRECT.

THE COURT: FROM EVERYTHING WE CAN DETERMINE.

MR. FROSCH: THAT IS CORRECT, YOUR HONOR.

THE COURT: SO WHATEVER HAPPENED TO HIM HAPPENED AT SOME POINT AFTER THE INTERROGATION WAS CONCLUDED?

MR. FROSCH: THAT IS CORRECT.

THE COURT: AM I CORRECT THAT DEPUTY METZ THEN LEFT THE JAIL?

MR. FROSCH: THAT IS CORRECT.

THE COURT: OKAY.

MR. FROSCH: DEPUTY METZ LEFT. I BELIEVE IT WAS DEPUTY BREAUX AND ANOTHER DEPUTY ON DUTY AT THE JAIL AT THE TIME THIS HAPPENED.

THE COURT: THERE WERE ONLY TWO?

MR. FROSCH: I BELIEVE SO, YOUR HONOR.

THE COURT: WHO WAS THE OTHER ONE?

MR. ROLFS: YOUR HONOR, IF I MAY. THAT WAS DEPUTY [p. 5] NEAL.

MR. FROSCH: DEPUTY NEAL. THANK YOU.

OUR MOTION IS BASED ON THE PREMISE THAT THE PLAINTIFF HAS FAILED TO SHOW SUFFICIENT FACTS THAT WOULD INDICATE THAT THE CONSTITUTIONAL RIGHTS OF THE DECEDENT WERE VIOLATED.

THE COURT: LET ME ASK ONE MORE. WHO IS JOHN STERLING? DO YOU KNOW?

MR. FROSCH: JOHN STERLING IS AN ALIAS THAT THE DECEDENT GAVE WHEN HE WAS

ARRESTED. ORIGINALLY THEY HAD ASKED, WHO ARE YOU –

THE COURT: NAMED AS A DEFENDANT IN THE ORIGINAL COMPLAINT. BUT –

MR. FROSCH: I AM NOT SURE WHY HE WAS NAMED. AS FAR AS I KNOW, THAT IS A FICTITIOUS NAME OR AN ALIAS THAT WAS USED BY THE DECEDENT.

THE COURT: WE WILL ASK THE PLAINTIFF. MR. FROSCH: ORIGINALLY.

THE COURT: OKAY.

MR. FROSCH: OUR MOTION, AS I SAID, BASICALLY IS BASED UPON THE QUALIFIED IMMUNITY DEFENSE WHICH THERE IS A TWO-STEP PROCESS THAT GOES INTO ANALYZING THAT DEFENSE.

THE FIRST ONE IS – THE FIRST STEP IS WHETHER THE PLAINTIFF CAN SHOW THAT THE GOVERNMENT OFFICIAL DEPRIVED THE PERSON OF A CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT. IF THERE IS NO VIOLATION, THEN THE DEFENDANTS ARE ENTITLED TO [p. 6] QUALIFIED IMMUNITY AND THE CASE CANNOT PROCEED.

THE COURT: WELL, IF THEY HUNG HIM, THERE WOULDN'T BE ANY DOUBT THAT THEY WERE DEPRIVING HIM OF A CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT, WOULD IT?.

MR. FROSCH: I BELIEVE THAT IS CORRECT, YOUR HONOR. BUT THERE IS ABSOLUTELY NO EVIDENCE BROUGHT FORWARD BY THE PLAINTIFF TO

INDICATE THAT ANY OF THE GUARDS WERE INVOLVED IN THIS ACT. THE CELL DOOR IS LOCKED FROM THE GUARD STATION. IT WAS –

THE COURT: I THOUGHT IT LOCKED AUTOMATICALLY WHEN IT CLOSES.

MR. FROSCH: RIGHT. BUT IT CAN ONLY BE OPENED FROM THE GUARD STATION WHICH IS WHY WHEN HE WAS OBSERVED BY THE TRUSTEES WHO WERE BRINGING AROUND THE SANDWICHES, THEY HAD TO SIGNAL TO THE DEPUTY TO COME IN THERE. AND THE DEPUTY THAT CAME IN SIGNALLED TO THE GUARD STATION TO OPEN THE DOOR. THAT'S WHEN THEY CUT HIM DOWN.

AND THERE IS NO TESTIMONY FROM ANY OF THE INMATES THAT WERE ON THAT TIER OR THE DEPUTIES THAT WERE ON DUTY THAT ANYONE OTHER THAN DEPUTY METZ WHEN HE INTERROGATED THE PLAINTIFF, THE DECEDENT, HAD EVER ENTERED THAT CELL OR GONE TOWARD THAT CELL.

THE COURT: I FIND IT DIFFICULT TO UTILIZE THE CONCEPT OF QUALIFIED IMMUNITY IN A CASE LIKE THIS.

IF THERE WAS PARTICIPATION BY THESE DEFENDANTS IN THE [p. 7] ACTIVITIES WHATEVER THEY WERE THAT LED TO THE DEATH OF THIS PERSON, THEN THERE IS NO QUESTION BUT THAT THEY WERE VIOLATING HIS CLEARLY ESTABLISHED CONSTITUTIONAL RIGHT TO DUE PROCESS BEFORE BEING DEPRIVED OF HIS LIFE.

MR. FROSCH: I UNDERSTAND THAT, YOUR HONOR. THE COURT: IT SEEMS TO ME THE QUESTION THAT WE HAVE BEFORE THE HOUSE IS WHETHER OR NOT THERE IS A SUFFICIENT EVIDENTIARY BASIS TO SAY THAT ONE OR MORE OF THESE DEFENDANTS WAS MORE PROBABLY THAN NOT INVOLVED IN THE EVENTS THAT LED TO THIS PERSON'S DEATH.

MR. FROSCH: THAT IS OUR POSITION, YOUR HONOR, THAT THAT IS THE FIRST STEP OF THE QUALIFIED IMMUNITY ANALYSIS.

IF THE PLAINTIFFS DON'T PASS THAT STEP, THEN EVERYBODY GOES HOME.

THE COURT: WELL, I DON'T SEE ANYTHING PECULIAR TO 1983 LITIGATION ABOUT THE FACT THAT YOU HAVE TO HAVE SOME FACTUAL BASIS FOR SUING SOMEBODY. AND ISN'T THAT WHAT WE ARE TALKING ABOUT?

MR. FROSCH: BASICALLY, YES. THAT IS WHAT WE ARE TALKING ABOUT.

OUR POSITION IS THAT IN THE SECTION 1983 CONCEPT THAT THIS IS THE FIRST STEP OF AN ANALYSIS WHICH IN THE LONG RUN POTENTIALLY COULD LEAD TO AN IMMEDIATE APPEAL.

IF THIS WERE JUST A REGULAR SUMMARY JUDGMENT MOTION AND WE WERE DENIED, THEN WE GO TO TRIAL. BUT IN THE QUALIFIED [p. 8] IMMUNITY CONTEXT AN ADVERSE DECISION COULD BE IMMEDIATELY APPEALABLE.

THE COURT: I DON'T SEE HOW YOU CAN PUT THIS IN A QUALIFIED IMMUNITY CONTEXT BECAUSE I DON'T THINK QUALIFIED IMMUNITY HAS GOT ANYTHING TO DO WITH IT. PROCEED – YOU DON'T NEED TO WORRY ABOUT IT.

MR. FROSCH: WELL, SETTING THAT ASIDE, YOUR HONOR, THEN CONSIDERING THIS AS A REGULAR SUMMARY JUDGMENT MOTION, AS YOU SAID, IT IS UP TO THE PLAINTIFF TO SHOW THAT THERE IS SOME MATERIAL FACT AT ISSUE THAT WOULD TEND TO PROVE HIS CASE.

THERE IS NOTHING HERE THAT WOULD INDICATE, NUMBER ONE, EITHER THE INMATES, THE OTHER INMATES THAT WERE ON THE CELL, PARTICIPATED IN THIS. NUMBER TWO, THAT ANY OF THE DEPUTIES PARTICIPATED IN THIS. THERE IS NOTHING. HE HAS NOTHING AGAINST EITHER OF THOSE. EVEN IF HE COULD ATTRIBUTE THAT TO EITHER THE DEPUTY OR THE SHERIFF, THERE IS NOTHING THAT SHOWS THAT ANYONE ELSE WAS INVOLVED IN THIS. THERE IS SOME TESTIMONY FROM ONE OF THE DOCTORS THAT SAID, DIDN'T LOOK LIKE A SHEET TO ME, BUT IT COULD HAVE BEEN A SHEET.

THE COURT: WELL, I THINK THE TESTIMONY OF THAT PARTICULAR PHYSICIAN WHO WAS NOT THE PHYSICIAN WHO DID THE AUTOPSY IS STRONGER THAN THAT. I THINK HE SPECIFICALLY SAID IT HAD TO BE A ROPE OR A – A THIN ROPE OR A CORD.

MR. FROSCH: BUT HE DID ALSO –

THE COURT: AND DENIED THAT IT WAS A –

[p. 9] MR. FROSCH: – TESTIFY THAT IT COULD HAVE BEEN – A SHEET COULD POSSIBLY BE TWISTED TO MADE [sic] THOSE KINDS OF MARKS.

THE COURT: WELL, IF HE SAID THAT, IT WAS IN THE CONTEXT OF ALMOST ANYTHING IS POSSIBLE. BUT IT WAS QUITE STRONG, BUT IT IS NEVERTHELESS NOTHING BUT HIS OPINION.

MR. FROSCH: RIGHT. AND WE ALSO HAVE THE PHYSICAL OBSERVATIONS OF THE TWO-INMATE TRUSTEES. AND I BELIEVE AT LEAST ONE OF THE DEPUTIES WHO OBSERVED HIM IN THE CALL [sic] HANGING FROM A SHEET.

THERE IS NO TESTIMONY THAT THERE WAS ANYTHING ELSE IN THE CELL THAT COULD HAVE CAUSED – A ROPE OR ANYTHING LIKE THAT.

THE COURT: NO ROPE OR CORD OR ANYTHING LIKE THAT HAS EVER SURFACED?

MR. FROSCH: THAT'S CORRECT. THAT'S CORRECT. AND THERE WAS NO OBSERVATION BY ANY OF THE PEOPLE ON THE SCENE THAT ANYTHING OF THAT NATURE WAS IN THE CELL.

THE COURT: LET'S SEE WHAT THE PLAINTIFF HAS TO SAY.

MR. GALVIS: YOUR HONOR, IF I MAY JUST RAISE THE ISSUE – AND I AM LOU GALVIS HERE FOR SPHERE DRAKE AND THE OTHER EXCESS CARRIERS.

WE FILED THE SAME MOTION. I MIGHT BE ABLE TO RESPOND TO SOME OF YOUR QUESTIONS IF YOU WOULD PERMIT ME OR IF YOU WOULD RATHER HEAR FROM MR. ROLFS FIRST.

THE COURT: LET'S HEAR FROM THE PLAINTIFF. IF IT IS [p. 10] NECESSARY, WE WILL COME BACK TO YOU.

MR. ROLFS: YOUR HONOR, PLEASE, EMILE ROLFS AND JAMES R. "SONNY" CHASTAIN ON BEHALF THE PLAINTIFFS.

IF YOUR HONOR, PLEASE, MR. O'BRIEN REPRESENTS THE MOTHER OF THIS YOUNG MAN WHO INTERVENED IN THE CASE. HE HAD A CONFLICT AND RESPECTFULLY ASKED PERMISSION FOR ME TO SPEAK FOR HIM IF THAT IS ALL RIGHT.

THE COURT: SURE.

MR. ROLFS: YOUR HONOR, PLEASE, THIS CASE –

THE COURT: WHO IS JOHN STERLING AND WHY DID YOU SUE HIM?

MR. ROLFS: YOUR HONOR, PLEASE, AS A CONSEQUENCE OF THE INITIAL INVESTIGATION WHICH WE HAD, THEY WOULDN'T LET US HAVE THE POLICE REPORT PRIOR TO FILING THE SUIT.

WE WERE TOLD THAT A JOHN STERLING WAS A DEPUTY WHO WAS INVOLVED. THAT IS WHY WE NAMED HIM AS A DEFENDANT. AS IT TURNS OUT ALLEGEDLY THIS YOUNG MAN KNOWN AS RATCLIFF JUNIOR TOLD THE ARRESTING DEPUTIES

THAT HIS NAME WAS JOHN STERLING. THAT'S ALL I CAN TELL YOU.

THE COURT: THE AMENDED COMPLAINT HAS NO REFERENCE TO JOHN STERLING. WAS THAT YOUR ATTEMPT TO DISMISS IT –

MR. ROLFS: YOUR HONOR –

THE COURT: – FROM THIS LAWSUIT.

MR. ROLFS: YES, SIR. AND I OBVIOUSLY – I HAVEN'T GONE BACK AND LOOKED AT IT, BUT OBVIOUSLY I SHOULD HAVE –

[p. 11] THE COURT: I WAS WRITING DOWN THE NAME OF THE DEFENDANTS SO I COULD TRY TO KEEP THEM STRAIGHT BECAUSE I AM NOT GOING TO LET YOU PUT THEM ALL IN THE SAME TRICK BAG AND JUST TALK ABOUT THESE DEFENDANTS.

MR. ROLFS: AND I DON'T DESIRE TO PUT ANYONE IN THE TRICK BAG, YOUR HONOR, PLEASE. THAT WAS A – THAT WAS INFORMATION THAT WE HAD INITIALLY THAT WE BELIEVED TO BE TRUE AND FOUND OUT IT WASN'T TRUE. WE AMENDED THE PETITION AND OBVIOUSLY –

THE COURT: WELL, WHO IS JOHN DOE? BECAUSE YOU HAVE HAD AMPLE TIME TO IDENTIFY JOHN DOE IN THE THREE YEARS OR SO THAT THIS MATTER HAS BEEN PENDING.

MR. ROLFS: YOUR HONOR, WE DON'T NEED – JOHN DOE IS NO ONE, SIR.

I THINK WE HAVE NAMED AS DEFENDANTS THE PRINCIPAL PLAYERS IN THIS UNHAPPY LITTLE INCIDENT, SHERIFF WILLIAM DANIEL, DEPUTY SCOTT BREAUX, STEVE NEAL AND RANDY METZ.

THE COURT: OKAY. THEN ARE THE ONLY FOUR DEFENDANTS ABOUT WHICH WE NEED TO BE CONCERNED; IS THAT CORRECT?

MR. ROLFS: YES, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. ROLFS: YOUR HONOR, PLEASE, THIS YOUNG MAN WAS ARRESTED. INCIDENTALLY HE HAD NO RAP SHEET, YOUR HONOR, PLEASE. HE WAS ARRESTED AFTER BEING UP WITH HIS FAMILY MEMBERS IN THE CEMETERY THERE IN ST. FRANCISVILLE DIGGING A [p. 12] GRAVE FOR HIS GRANDMOTHER. HE WAS WITH HIS FATHER AND HIS UNCLES AND SOME COUSINS AND UPON LEAVING ABOUT 5:30 THAT AFTERNOON HE WAS OBSERVED BY SHERIFF DANIELS' SON, AN OFF-DUTY SHERIFF'S DEPUTY. HE SAID HE LOOKED SUSPICIOUS BECAUSE HE WAS KID WITH A RAG ON HIS HEAD.

IN ANY EVENT THEY PUT – THEY CALLED A – HE CHECKED THE LICENSE NUMBER AND SURE ENOUGH IT COMES BACK. AND ALLEGEDLY THE CAR HAD BEEN REPORTED STOLEN IN BATON ROUGE. SO THEY PULL HIM OVER. THERE IS SOME ACTIVITIES AT THE SCENE OF THE ARREST THAT HIS COUSINS WILL TESTIFY TO WHEN WE BRING THIS CASE TO TRIAL. BUT IN ANY EVENT THE LONG AND SHORT OF IT IS, HE WAS TAKEN TO THE JAIL ABOUT

SIX O'CLOCK ON A FRIDAY NIGHT. HE IS EMOTIONALLY UPSET, WEEPING, VERY DISTRAUGHT. THEY CHARGE HIM WITH POSSESSION OF A STOLEN MOTOR VEHICLE AND DRIVING WITHOUT A DRIVERS, LICENSE. THEY PUT HIM IN THE JAIL AND THERE IS MUCH TESTIMONY ABOUT HOW UPSET HE WAS, AND HOW THEY HAD NEVER SEEN A GROWN BOY CRYING LIKE THAT. PUT HIM IN AN OBSERVATION CELL WITH A LARGE WINDOW IN IT ACROSS THE HALLWAY FROM THE SO-CALLED CONTROL ROOM.

HE SPENDS THE NIGHT THERE. THE FOLLOWING MORNING THERE IS A SPLIT IN THE TESTIMONY HERE BETWEEN DEPUTY DAIGLE ON THE ONE HAND AND SHERIFF DANIEL ON THE OTHER HAND.

BUT IT WAS – THE INSTRUCTIONS ACCORDING TO DEPUTY DAIGLE OF THE SHERIFF WAS REMOVE HIM FROM THE OBSERVATION CELL AND PUT HIM DOWN THE HALL IN A CELL BY HIMSELF WHICH WAS, IN [p. 13] ESSENCE, AN ISOLATION CELL, A SINGLE CELL BY HIMSELF.

NOW, THE DEPUTIES – WE HAVE DEPOSED EVERY SHERIFF'S DEPUTY WE COULD GET OUR HANDS ON INCLUDING THE SHERIFF AND ALMOST WITHOUT EXCEPTION THEY TESTIFIED THAT HE WAS EMOTIONALLY DISTRAUGHT AND UPSET THROUGH THE DAY. THAT INDICATION IS ALSO SEEN IN STATEMENTS TAKEN BY THE SHERIFF'S DEPUTIES FROM THE INMATES WHO WERE ALSO STATEMENTIZED (SIC) FOLLOWiNG THIS YOUNG MAN'S DEATH.

ON SEVERAL, ON SEVERAL OCCASIONS DURING THE DAY HE REQUESTED PERMISSION TO GO TO HIS GRANDMOTHER'S FUNERAL WHICH WAS THAT AFTERNOON.

SEVERAL OF THE INMATES INDICATE THAT THAT'S THE CASE AND TWO OF THE SHERIFF'S DEPUTIES AFFIRMED THAT THE YOUNG MAN WANTED TO GO TO HIS GRANDMOTHER'S FUNERAL.

DEPUTY DAIGLE TESTIFIED TO THAT AND DEPUTY METZ ACKNOWLEDGED THAT WAS TRUE. DEPUTY DAIGLE CALLED THE SHERIFF AND ASKED HIM COULD HE GO, COULD THE KID GO TO HIS GRANDMOTHER'S FUNERAL. HE WAS VERY CLOSE TO HER, AND THE SHERIFF SAID, NO.

THE CHARGE WAS MUCH TOO SERIOUS. HE CAN'T GO TO HIS GRANDMOTHER'S FUNERAL. SO ABOUT THREE P.M. THAT AFTERNOON, DEPUTY METZ DECIDES THAT IT IS APPROPRIATE TO HAVE AN INTERVIEW WITH THIS MAN.

THE CHARGE – HE IS BEING DETAINED, YOUR HONOR, PLEASE, FOR THE AUTHORITIES IN EAST BATON ROUGE PARISH. THIS WAS NOT [p. 14] AN OFFENSE COMMITTED IN THE PARISH OF EAST FELICIANA.

THE COURT: WHAT WAS THE SPECIFIC CHARGE?

MR. ROLFS: POSSESSION OF A STOLEN MOTOR VEHICLE.

THE COURT: IT WAS COMMITTED IN WEST FELICIANA PARISH IF HE WAS POSSESSING A

STOLEN MOTOR VEHICLE IN WEST FELICIANA PARISH.

MR. ROLFS: I STAND CORRECTED, YOUR HONOR, PLEASE.

THE COURT: SO I DON'T KNOW WHAT, WHETHER HE IS CHARGED WITH THAT IN WEST FELICIANA OR SOMETHING ELSE, BUT –

MR. ROLFS: HE WAS BEING HELD, ACCORDING TO THE JAIL RECORDS FOR EAST BATON ROUGE.

THE COURT: OKAY.

MR. ROLFS: WHY IT WAS NECESSARY TO INTERROGATE HIM FOR AN HOUR ABOUT THE CIRCUMSTANCES OF THE AUTOMOBILE AND ALL THAT WHEN IN TRUTH AND IN FACT HE IS BEING HELD FOR AUTHORITIES IN EAST BATON ROUGE IS SORT OF BEYOND ME BUT –

THE COURT: WHAT DOES THAT HAVE TO DO WITH YOUR LAWSUIT OTHER THAN THEY INFER THEY WERE DOING SOMETHING THAT THEY SHOULDN'T BEEN DOING? TRY TO PUT THE BLACK HAT ON.

MR. ROLFS: THEY – IF YOUR HONOR, PLEASE, ONE OF THE INMATES HAS TESTIFIED THAT THERE WAS SOME CONCERN ABOUT DRUG SALES IN THE PARISH AT THE TIME. THEY TOOK A VIEW – THE AUTHORITIES TOOK A DIM VIEW OF PEOPLE IN THE PARISH THAT THEY DIDN'T RECOGNIZE. AND SO IT WAS NOT UNCOMMON WHEN THEY WERE TRYING TO GET INFORMATION FROM SUSPECTED

OFFENDERS TO [p. 15] INTERROGATE THEM AND TELL THEM IF THEY DIDN'T TELL THE TRUTH THEY WOULD SEND THEM TO ANGOLA WHERE THEY WILL MAKE A WOMAN OUT OF THEM.

AND SO, I BELIEVE THAT THIS WAS NO – AND I DON'T HAVE ANY AFFIRMATIVE EVIDENCE OF IT OTHER THAN WHAT THE INMATE, ISAAC WASHINGTON, HAD TO SAY.

THE COURT: THE INMATE WAS NOT PRESENT AT THE INTERROGATION OF THIS OTHER – THE DECEASED, WAS HE?

MR. ROLFS: HE DEFINITELY WAS NOT, YOUR HONOR. I THINK – I BELIEVE –

THE COURT: WAIT A MINUTE. LET'S GET DOWN TO IT. WHAT EVIDENCE DO YOU HAVE THAT DEPUTY METZ HAD ANYTHING TO DO WITH THE DEATH OF THIS INDIVIDUAL?

MR. ROLFS: IF YOUR HONOR, PLEASE –

THE COURT: HE IS THE ONE THAT CONDUCTED THE INTERROGATION AND ACCORDING TO THE EVIDENCE THAT HAS BEEN PRESENTED TO ME. HE LEFT IMMEDIATELY THEREAFTER AND THEN DIDN'T KNOW ANYTHING ABOUT THIS UNTIL IT WAS ALL OVER.

MR. ROLFS: THAT IS WHAT HAS BEEN PRESENTED TO YOU, YOUR HONOR.

THE CENTRAL ISSUE IN THE CASE, I BELIEVE IS WHETHER OR NOT THIS WAS A HOMICIDE OR SUICIDE.

THE COURT: NO. THE CENTRAL ISSUE RIGHT NOW IS WHAT EVIDENCE DO YOU HAVE THAT DEPUTY METZ HAD ANYTHING TO DO WITH ANYTHING THAT CAUSED THE DEATH OF THIS YOUNG MAN?

[p. 16] MR. ROLFS: THE EVIDENCE I HAVE, IF YOUR HONOR PLEASE, IS THAT ONLY METZ AND BREAUX AND NEAL WERE PRESENT AT THE TIME.

THE COURT: WHAT TIME?

MR. ROLFS: – AT THE TIME OF THE CIRCUMSTANCES IMMEDIATELY PRIOR TO HIS DEATH IN THAT JAIL CELL.

THE EVIDENCE I HAVE INCLUDES THE SWORN TESTIMONY OF DOCTOR ALFREDO SUAREZ, ONE OF THE MOST IMMINENT –

THE COURT: I AM NOT INTERESTED IN THAT. I AM INTERESTED IN THE ANSWER TO MY QUESTION. WHAT EVIDENCE DO YOU HAVE THAT DEPUTY METZ HAD ANYTHING TO DO WITH WHATEVER IT WAS THAT MAY HAVE CAUSED THIS YOUNG MAN'S DEATH?

MR. ROLFS: MY EVIDENCE – I AM TRYING –

THE COURT: WHAT I HAVE BEEN PRESENTED WITH IS THAT HE INTERROGATED HIM IN THIS ROOM. THERE WAS NOTHING WRONG WITH HIM AT THE TIME. A DIFFERENT DEPUTY THEN ESCORTED HIM BACK TO THE CELL AND DEPUTY METZ LEFT THE JAIL. THAT IS WHAT I HAVE

GLEANED FROM THE VERY PARTS OF DEPOSITIONS, ET CETERA, THAT HAVE BEEN PRESENTED.

IS THAT CORRECT?

MR. ROLFS: I DON'T KNOW THAT IT IS, YOUR HONOR. THAT IS WHAT JESSIE METZ SAYS. I WASN'T THERE. THEY WERE IN CONTROL.

THE COURT: WHAT EVIDENCE DO YOU HAVE THAT IT IS NOT CORRECT?

[p. 17] MR. ROLFS: THE EVIDENCE THAT I HAVE, YOUR HONOR, PLEASE, IS THAT THE EXPERT MEDICAL WITNESSES SAY THAT HE WAS STRANGLED.

THE COURT: WELL, THEY DON'T SAY DEPUTY METZ STRANGLED HIM.

MR. ROLFS: NO, SIR. BUT THAT MAN COULD NOT HAVE BEEN STRANGLED WITHOUT THE COMPLICITY OF THE PEOPLE IN CHARGE OF THE FACILITY AT THAT TIME. NOW EITHER THEY WERE INVOLVED DIRECTLY –

THE COURT: WHAT EVIDENCE DO YOU HAVE THAT DEPUTY METZ WAS INVOLVED IN A CONSPIRACY WITH OTHERS THAT HELPED TO CAUSE THE DEATH OF THIS YOUNG MAN?

MR. ROLFS: THE EVIDENCE I HAVE, IF YOUR HONOR PLEASE, IS THAT HE WAS THERE –

THE COURT: HE WAS NOT THERE WHEN ANYTHING WAS DONE TO HIM.

MR. ROLFS: IF YOUR HONOR PLEASE, HE SAID HE WAS. I DON'T KNOW THAT. I AM NOT CONCEDING THAT.

THE COURT: WHERE IS YOUR EVIDENCE THAT WHAT HE SAYS IS NOT TRUE?

MR. ROLFS: I HAVE NO EYEBALL WITNESS WHO CAN SAY THAT WHAT MR. METZ SAYS IS FALSE. THAT IS, THAT HE LEFT IMMEDIATELY. I AM TELLING THIS COURT THAT THIS IS A SMALL JAIL. THERE WERE THREE DEPUTY SHERIFFS INVOLVED.

THE COURT: WHAT DO YOU MEAN INVOLVED?

[p. 18] MR. ROLFS: WELL, THREE ON DUTY IN THE BUILDING AT THE TIME WITHIN HOURS – THE YOUNG MAN WAS FOUND DEAD WITHIN FORTY MINUTES OF THE CONCLUSION, IF YOUR HONOR PLEASE, THE ALLEGED CONCLUSION OF THE INTERROGATION.

THE COURT: ALL RIGHT.

MR. ROLFS: IF HE WAS ALL RIGHT AT THE TIME –

THE COURT: HE WAS NOT DEAD AT THE TIME DEPUTY METZ LEFT. HE WAS NOT HANGING FROM ANYTHING AT THE TIME DEPUTY METZ LEFT. THERE WAS NO ROPE AROUND HIS NECK AT THE TIME DEPUTY METZ LEFT.

MR. ROLFS: YOU ARE QUITE CORRECT, YOUR HONOR. WELL, I DO NOT ACKNOWLEDGE

THAT DEPUTY METZ LEFT. I THINK THAT IT WAS A CREDIBILITY ISSUE –

THE COURT: THERE IS NO CREDIBILITY ISSUE. WHAT EVIDENCE DO YOU HAVE THAT HE DID NOT LEAVE? YOU ARE TELLING ME NONE.

MR. ROLFS: I HAVE NO EVIDENCE THAT HE DID NOT LEAVE.

THE COURT: ALL RIGHT. WHAT EVIDENCE DO YOU HAVE THAT DEPUTY BREAUX WAS INVOLVED IN ANY ACTIVITY OR CONSPIRACY THAT LED TO THE DEATH OF THIS YOUNG MAN?

MR. ROLFS: COME BACK TO THE FACTS, IF YOUR HONOR PLEASE, THAT IF METZ RETURNED HIM TO THE CELL OR ONE OF THEM RETURNED HIM TO THE CELL –

THE COURT: WELL, THE TESTIMONY IS THAT DEPUTY [p. 19] THINK IT BREAUX WHO RETURNED HIM TO THE CELL. NEAL WAS THE OTHER FERSON PRESENT IN THE JAIL ACCORDING TO WHAT I HAVE BEEN TOLD.

MR. ROLFS: THAT IS WHAT THE TESTIMONY HAS BEEN, IF YOUR HONOR PLEASE. IF BREAUX DID THAT AND RETURNED HIM TO THE CELL, THEY CLAIM THE CELL DOORS, THE STEEL CELL DOORS LOCK.

THE COURT: THAT'S WHAT THEY SAY THAT WHEN YOU CLOSE THEM, THEY LOCK AUTOMATICALLY.

MR. ROLFS: SO PRESUMABLY THE ONLY PERSON OR PERSONS THAT CAN UNLOCK THE DOOR OR CAUSE THE DOORS TO BE UNLOCKED ARE EITHER A SHERIFF'S DEPUTY OR SOMEONE ACTING IN THE PLACE INSTEAD OF THE SHERIFF'S DEPUTY.

THE FACT IS, AND THERE IS NO PHOTOGRAPH OF THE DECEDENT HANGING. THERE IS A PHOTOGRAPH OF A SHEET TIED TO A LIGHTING FIXTURE IN THE CEILING.

ALFREDO SUAREZ, ASSISTANT CORONER, PARISH OF EAST BATON ROUGE HAS EXAMINED MORE HANGING VICTIMS THAN ANYBODY IN LOUISIANA IN THE LAST TWENTY YEARS. HE SAID IT AIN'T –

THE COURT: HE DID NOT DO THE AUTOPSY.

MR. ROLFS: NO, SIR. HE DID NOT. HE WAS CALLED – DOCTOR LAGER SAID THAT HE DIDN'T THINK – DOCTOR LAGER PERFORMED THE AUTOPSY, EMERALD M. LAGER. AND I HAVE QUOTED CERTAIN PORTIONS OF HIS TESTIMONY. HE SAID –

THE COURT: I KNOW WHAT BOTH OF THEM SAID. DOCTOR LAGER CONCEDED THAT IT COULD HAVE BEEN DONE BY A SHEET. [p. 20] DOCTOR SUAREZ DOES NOT WANT TO CONCEDE THAT IT COULD HAVE BEEN DONE BY A SHEET.

MR. ROLFS: YES, SIR.

NOW, IF THAT IS TRUE –

THE COURT: BOTH OF THOSE ARE SIMPLY OPINIONS, NO ACTUAL FACTS ARE PRESENTED TO THE COURT OTHER THAN SOME HISTORICAL FACTS ABOUT THE BODY.

MR. ROLFS: I HAVE PHOTOGRAPHS OF THE BODY WHICH SHOW IN GRUESOME DETAIL –

THE COURT: I HAVE NO DOUBT ABOUT THAT. IT IS A GRUESOME THING. NO QUESTION ABOUT IT. IT IS A TERRIBLE THING. IT IS AWFUL.

MY QUESTION IS WHAT EVIDENCE DO YOU HAVE – AND IN YOUR OPPOSITION, YOU CONTINUALLY DO THIS. THE JURY SHOULD DECIDE IF DEFENDANTS ARE LIABLE. DEFENDANTS DID THIS. DEFENDANTS MUST HAVE DONE THAT. ONE OF THE DEFENDANTS MUST HAVE DONE THAT.

I WANT TO KNOW WHO BECAUSE WE ARE NOT SUING DEFENDANTS. WE ARE SUING SHERIFF DANIELS, DEPUTY BREAUX, DEPUTY NEAL AND DEPUTY METZ. AND WE ARE TALKING ABOUT A CONSTITUTIONAL TORT. AND I WANT TO KNOW WHAT EVIDENCE YOU HAVE THAT WOULD SUPPORT A CONSTITUTIONAL TORT AS TO EACH ONE OF THESE DEFENDANTS. METZ I HAVE ALREADY ELIMINATED.

MR. ROLFS: IF YOUR HONOR PLEASE, TO ME THIS IS A RES IPSA CASE.

[p. 21] THE COURT: RES IPSA DOES NOT APPLY IN CONSTITUTIONAL TORT CASES. I DON'T KNOW IF IT APPLIES ANYWHERE IN THE WORLD ANYMORE, BUT IT CERTAINLY DOESN'T APPLY IN A CONSTITUTIONAL TORT CASE.

MR. ROLFS: IF YOUR HONOR PLEASE, I UNDERSTAND THE COURT FEELS THAT WAY AND ALL I WISH –

THE COURT: – YOU CONCEIVABLY COULD HAVE A STATE LAW CLAIM. WE ARE NOT TALKING ABOUT A STATE LAW CLAIM.

MR. ROLFS: I REALIZE THAT, SIR.

THE COURT: YOU MIGHT HAVE SOME NEGLIGENCE AGAINST SOMEBODY, BUT I HAVEN'T FOUND THAT YET.

MR. ROLFS: IF YOUR HONOR PLEASE, THE ESSENCE OF IT, I THINK IS THAT BUT FOR AN ACTION OR OMISSION OF THE THREE SHERIFF'S DEPUTIES WHO WERE THERE AT THE TIME THIS COULD NOT HAVE HAPPENED.

BUT FOR –

THE COURT: IN ORDER TO MAKE OUT THE CONSTITUTIONAL TORT THAT YOU SEEK TO MAKE OUT IN THIS CASE, YOU MUST PROVE AT LEAST A CONSCIOUS OR CALLOUS INDIFFERENCE TO A PRISONER'S RIGHT TO BE PROTECTED FROM THE HARM EITHER OF OTHER INMATES OR HARM AT THE HANDS OF THE PEOPLE WHO WERE RUNNING THE JAIL.

MR. ROLFS: YOUR HONOR, MAY I –

THE COURT: A CONSCIOUS, CALLOUS INDIFFERENCE TO HIS RIGHTS NOT A NEGLIGENT FAILURE TO CHECK ON HIM, NOT A NEGLIGENT ANYTHING ELSE.

[p. 22] MR. ROLFS: IF YOUR HONOR PLEASE, I RECOGNIZE THAT AT ONE TIME THAT WAS THE STANDARD.

MAY I REMIND THE COURT THAT THIS MAN WAS A PRE-TRIAL DETAINEE AND NOT A CONVICT, AND I DO RESPECTFULLY SUGGEST TO THE COURT THAT THERE ARE SOME RECENT FIFTH CIRCUIT CASES THAT WOULD INDICATE THAT THE STANDARD IS NOT THAT WHICH THE COURT HAS JUST ENUNCIATED.

THE COURT: WHAT IS THE STANDARD AND WHAT IS THE CASE?

MR. ROLFS: REASONABLE – REASONABLE CARE, IF YOUR HONOR PLEASE.

THE COURT: NO, NO. NO, NO. ABSOLUTELY NOT. WHAT CASE ARE YOU TALKING ABOUT?

MR. ROLFS: GRABOWSKI VERSUS HARGETT.

THE COURT: THAT'S HERE IN YOUR BRIEF?

MR. ROLFS: NO, SIR. IT JUST CAME OUT SINCE THE BRIEF WAS FILED 47 F.3rd –

MR. FROSCH: YOUR HONOR, IF I MAY –

MR. ROLFS: 1386 –

MR. FROSCH: WE ARE AWARE OF THAT CASE AND I BELIEVE THAT CASE IS UP FOR EN BANC REVIEW BY THE CIRCUIT.

MR. ROLFS: – I HADN'T EVEN FINISHED THE CITATION, IF YOUR HONOR PLEASE.

1995, MARCH 6, 1995, ORDER GRANTING REHEARING EN BANC MARCH 14, 1995.

[p. 23] THERE WAS AN EARLIER, A SLIGHTLY EARLIER CASE, IF YOUR HONOR PLEASE, WHICH I DID CITE IN MY BRIEF WHICH I BELIEVE STANDS FOR THE SAME PROPOSITION.

THE COURT: AND WHAT IS THAT CASE.

MR. ROLFS: THAT'S HALE – UH – ON PAGE SEVENTEEN OF MY BRIEF, IF YOUR HONOR PLEASE.

THE COURT: IS THAT – THE CASE YOU ARE TALKING ABOUT, IS THAT THE CASE THAT JUDGE BERRIGAN WROTE?

MR. ROLFS: HARE, YOUR HONOR. I MADE A MISTAKE.

THE COURT: IS THAT THE CASE JUDGE BERRIGAN –

MR. ROLFS: JUDGE BERRIGAN WROTE THE GRABOWSKI OPINION, YES, SIR.

THE COURT: OKAY. WELL, IT WILL NOT STAND.

MR. ROLFS: WELL, JUDGE – JUDGE POLITZ WAS ONE OF THE PANEL MEMBERS ON THE ORIGINAL –

THE COURT: I UNDERSTAND THAT. BUT IT IS NOT THE LAW OF THE FIFTH CIRCUIT BECAUSE IT IS EN BANC –

MR. ROLFS: YOU ARE QUITE CORRECT, SIR. IN THE HARE CASE, *HARE VERSUS CITY OF CORINTH*, NOW LET ME SAY THIS. *GRABOWSKI* DID NOT INVOLVE A SUICIDE IN JAIL. IT INVOLVED A COMPLAINT BY A PRISONER THAT HE WAS MISTREATED AND WHAT NOT AND THEY GOT INTO THE ISSUE OF THE PRE-TRIAL DETAINEE VERSUS CONVICTED PRISON STANDARDS BUT –

THE COURT: WELL, IT IS NOT AN EIGHTH AMENDMENT ISSUE FOR A PRE-TRIAL DETAINEE. IT IS A FOURTEENTH AMENDMENT, [p. 24] FIFTH AMENDMENT, FOURTEENTH AND FIFTH AMENDMENT ISSUE, A DUE PROCESS ISSUE BUT SUBSTANTIALLY THE SAME STANDARD APPLIES.

UNDER SOME CIRCUMSTANCES THERE MAY BE A REQUIREMENT THAT YOU PICK SOMETHING EXTRA ON A PRE-TRIAL DETAINEE. BUT THIS IS NOT SUCH A CASE. THE MATTER IS NOT WHETHER HE WAS A CONVICTED FELON OR A PRE-TRIAL DETAINEE. THERE CAN BE NO QUESTION BUT THAT HE IS ENTITLED TO BE PROTECTED FROM SOMEONE ELSE COMING IN AND STRANGLING HIM.

MR. ROLFS: YES, SIR.

YOUR HONOR, AND FURTHER TO ANSWER THE COURT'S QUESTION, WHAT EVIDENCE DO I HAVE? I HAVE A PHOTOGRAPH OF THE ROPE MARK ON THE NECK WHICH THE MEDICAL EXAMINERS VIEWED AND FROM WHICH THEY EXPRESSED THEIR OPINION.

NOW, I CAN'T TELL YOU, JUDGE, THAT I HAVE AN EYEBALL WITNESS WHO IS WILLING TO SAY THAT THESE FELLOWS DID THIS BAD THING, BUT THE FACT IS THAT I HAVE VERY ACCURATE PHOTOGRAPHS. I HAVE DOCTOR SUAREZ WHO AT MY REQUEST BEFORE THE BODY WAS BURIED WENT AND PERSONALLY VIEWED IT, PHOTOGRAPHED IT, MEASURED THE WOUNDS AND ALL THAT KIND OF THING AND SAID THIS WOUND, IN ESSENCE, SPEAKS FOR ITSELF. IT WAS NOT MADE BY A SHEET. THEREFORE, IF HE WAS LOCKED UP IN A CELL AS THEY SAY HE WAS, THESE FELLOWS SAY HE WASN'T STRANGLED WITH A SHEET. HE WAS STRANGLED WITH SOMETHING. HE'S DEAD.

NOW, I SAY TO THE COURT, AND GOD HELP ME THAT'S ALL I GOT. BUT FOR SOMEONE – THEY HAVE THE DUTY TO SAFEGUARD HIM [p. 25] AND CARE FOR HIM REASONABLY OR OTHERWISE, YOUR HONOR, AND BUT FOR SOMEONE'S ACTION OR INACTION A STRANGULATION TOOK PLACE.

THE COURT: THEREIN LIES THE PROBLEM. YOU CANNOT IDENTIFY THE SOMEONE.

MR. ROLFS: YOUR HONOR, I SUGGEST TO YOU I DON'T HAVE TO.

THE COURT: BUT I SUGGEST TO YOU, THAT YOU DO IN THIS COURT.

MR. ROLFS: WELL, I ACCEPT. I UNDERSTAND THE COURT'S VIEW AND OPINION, AND I RESPECT IT. I DO RESPECTFULLY DISAGREE. AND,

YOUR HONOR, ON THE OTHER HAND IF WE BELIEVE WHAT THEY SAY –

THE COURT: HOW ARE YOU GOING TO GET A JUDGMENT AGAINST SOMEBODY THAT YOU CAN'T IDENTIFY.

MR. ROLFS: I MAY HAVE TO MAKE SOME NEW LAWS, JUDGE.

THE COURT: WELL, YOU CERTAINLY MIGHT.

MR. ROLFS: I HAVE STRUGGLED WITH THIS CASE FOR A LONG TIME, SIR.

NOW, IF WE –

THE COURT: IT IS A DIFFICULT CASE.

MR. ROLFS: ON THE OTHER HAND, IF YOUR HONOR PLEASE, IF THIS WAS A SUICIDE AS THEY CLAIM IT WAS, THEN I BELIEVE THAT MISTER METZ AND MISTER BREAUX AND MISTER NEAL WERE DERELICT IN THEIR DUTIES IN NOT OBSERVING AND SEEING HIS EMOTIONALLY DISTRAUGHT CONDITION AND HIS OBVIOUS EMOTIONAL [p. 26] UPSET.

WE HAVE ASKED THEM WHAT POLICIES AND STANDARDS THEY FOLLOWED IN EVALUATING NEW INMATES TO DETERMINE WHETHER THEY REQUIRED ANY SPECIAL KINDS OF CARE OR FEEDING OR EMOTIONAL ASSISTANCE AND WHAT NOT.

ONE OF THE THINGS THEY LOOKED FOR WAS WHETHER OR NOT HE WAS CRYING AND UPSET.

NOW, THEY ALL AT ONE TIME OR ANOTHER ACKNOWLEDGED THAT HE WAS VERY UPSET. HE WANTED TO GO TO HIS GRANDMOTHER'S FUNERAL AND WAS CRYING.

THE LAST INMATE STATEMENT THAT WAS GIVEN SAID HE WAS CRYING AS LATE AS ONE O'CLOCK OR SO. HE WAS UPSET ABOUT NOT BEING ABLE TO GO TO HIS GRANDMOTHER'S FUNERAL. SO I WOULD LIKE –

THE COURT: METZ SAW HIM AT THREE?

MR. ROLFS: YES, SIR.

I WOULD LIKE TO BE WRONG ABOUT THE FACT THAT THE INDICATION IS THAT THERE WAS A STRANGULATION. I DON'T RELISH THAT AT ALL.

THE COURT: THERE IS NO QUESTION. I THINK THAT EVERYBODY SAYS THAT IT, THE CAUSE OF DEATH, WAS STRANGULATION. THE QUESTION AS TO WHETHER IT WAS DONE BY THIS SHEET THAT HE WAS FOUND HANGING FROM –

MR. ROLFS: YES.

THE COURT: – OR WAS IT DONE BY SOMETHING ELSE AND NO OTHER THING HAS EVER BEEN FOUND; IS THAT CORRECT?

[p. 27] MR. ROLFS: NO, SIR. NO OTHER THING HAS EVER BEEN FOUND.

THE COURT: THERE IS NO ROPE. THERE IS NO CORD, NO SHOELACES, NO NOTHING.

MR. ROLFS: NO, SIR.

THE COURT: AND ACCORDING TO THE INMATE HE WAS HANGING FROM THE SHEET, THE ONE THEY DISCOVERED.

MR. ROLFS: INMATE CLAIMS THAT HE WAS HANGING FROM THE SHEET.

THE COURT: YOU TAKE WHAT HE SAID FOR THAT BUT NOT FOR SOMETHING ELSE? OR YOU DON'T ACCEPT THAT, BUT YOU DO ACCEPT IT WHEN HE SAYS HE WAS CRYING, THE INMATE I AM TALKING ABOUT?

MR. ROLFS: JUDGE, INMATES ARE UNDER THE THUMB OF THE SHERIFF'S DEPUTIES. OKAY. IT IS A LITTLE KINGDOM. AND THEY ARE NOT GOING TO SAY ANYTHING THAT HURTS THE POSITION OF THE GUARDS IN THE KINGDOM.

THE COURT: WELL, PRESUMABLY SOME OF THOSE INMATES ARE OUT NOW AND NO LONGER UNDER THE THUMBS OF THE SHERIFF.

MR. ROLFS: THEY HAVE GOT FAMILY IN THE PARISH OF EAST FELICIANA, YOUR HONOR.

THE COURT: THIS IS WEST FELICIANA.

MR. ROLFS: EXCUSE ME, WEST FELICIANA.

THE COURT: THEY PROBABLY HAVE FAMILY IN EAST FELICIANA, TOO.

[p. 28] MR. ROLFS: I WOULD LIKE TO GET TO – IF THERE WASN'T EVIDENCE OF THE STRANGULATION, IF YOUR HONOR PLEASE.

I WAS VERY CAREFUL AS YOU SAW FROM THE ALLEGATIONS THAT I MADE IN THE ORIGINAL COMPLAINT ABOUT HOW I APPROACHED THAT ISSUE. I CAN'T HELP THE FACT THAT ONE OF THE MOST IMMINENT MEDICAL EXAMINERS, PATHOLOGIST IN THIS STATE, HAS SAID – OPPOSING COUNSEL WAS GETTING UP IN HIS FACE AND CROSS EXAMINING HIM PRETTY GOOD. AND HE SAID – FINALLY SAID, I THINK IT WOULD BE MORE LIKELY A HOMICIDE THAN A SUICIDE, YOU KNOW. SO I HAVE GOT TO BRING THIS

THE COURT: THAT'S HIS OPINION.

MR. ROLFS: YES, SIR. BASED UPON –

THE COURT: WHICH HE MAY OR MAY NOT BE ALLOWED TO EXPRESS TO A JURY. IN FACT IN THIS CASE, HE WOULD NOT BE ALLOWED TO EXPRESS IT TO THE JURY.

MR. ROLFS, I SEE NO ALTERNATIVE BUT TO GRANT THE MOTION FOR SUMMARY JUDGMENT AND TO DISMISS THIS ACTION AND LET YOU MAKE SOME NEW LAW WITH THE FIFTH CIRCUIT BECAUSE I CAN FIND NO FACTUAL BASIS FOR RETAINING ANY OF THESE DEFENDANTS IN THIS CASE.

I CAN'T FIND WHERE YOU HAVE ANY FACTS TO SUPPORT A CLAIM AGAINST THE SHERIFF, AGAINST BREAUX, NEAL OR METZ OTHER THAN THE FACT THAT BREAUX AND NEAL WERE PRESENT IN THE JAIL AT THE TIME THIS PERSON APPARENTLY DIED IN HIS CELL.

AND THAT IS NOT ENOUGH TO STATE A CONSTITUTIONAL TORT AND [p. 29] I AM STICKING TO THE CONSTITUTIONAL TORT BECAUSE WITHOUT THE FEDERAL CLAIMS I AM NOT GOING TO TALK ABOUT STATE CLAIMS. AND YOU DID AFFIX STATE LAW CLAIMS IN YOUR COMPLAINT.

BUT I AM GOING TO GRANT THE MOTION FOR SUMMARY JUDGMENT. I JUST DON'T SEE ANY ALTERNATIVE.

MR. ROLFS: VERY WELL, SIR.

THANK YOU VERY MUCH.

THE COURT: THANK YOU. I VERY MUCH WANTED THIS ARGUMENT SO THAT I COULD FIND OUT JUST WHERE WE ARE.

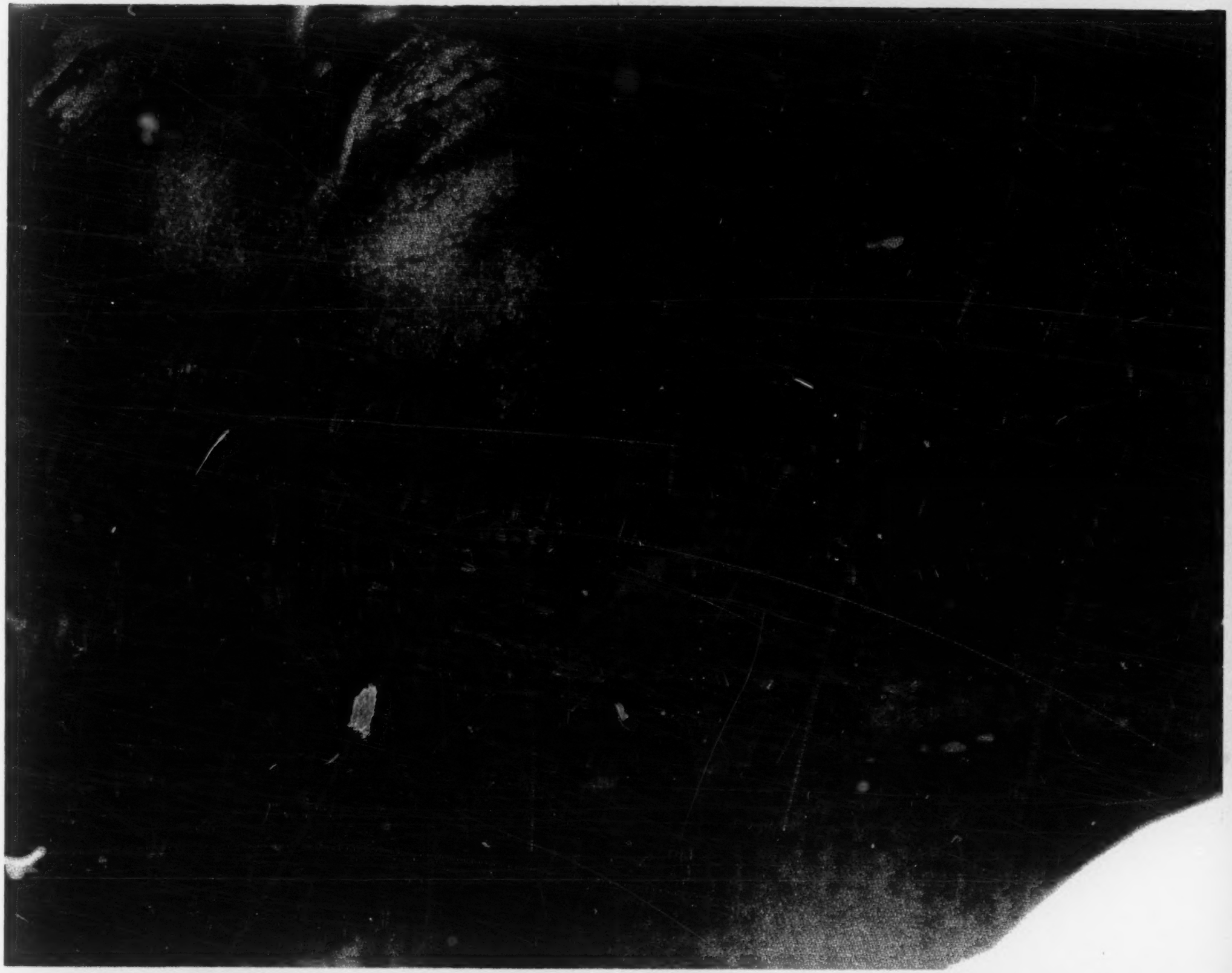
IN FACT, I GUESS, THERE ARE TWO MOTIONS FOR SUMMARY JUDGMENT, ONE BY THE INSURANCE CARRIERS, AND ONE BY THE ACTORS THEMSELVES.

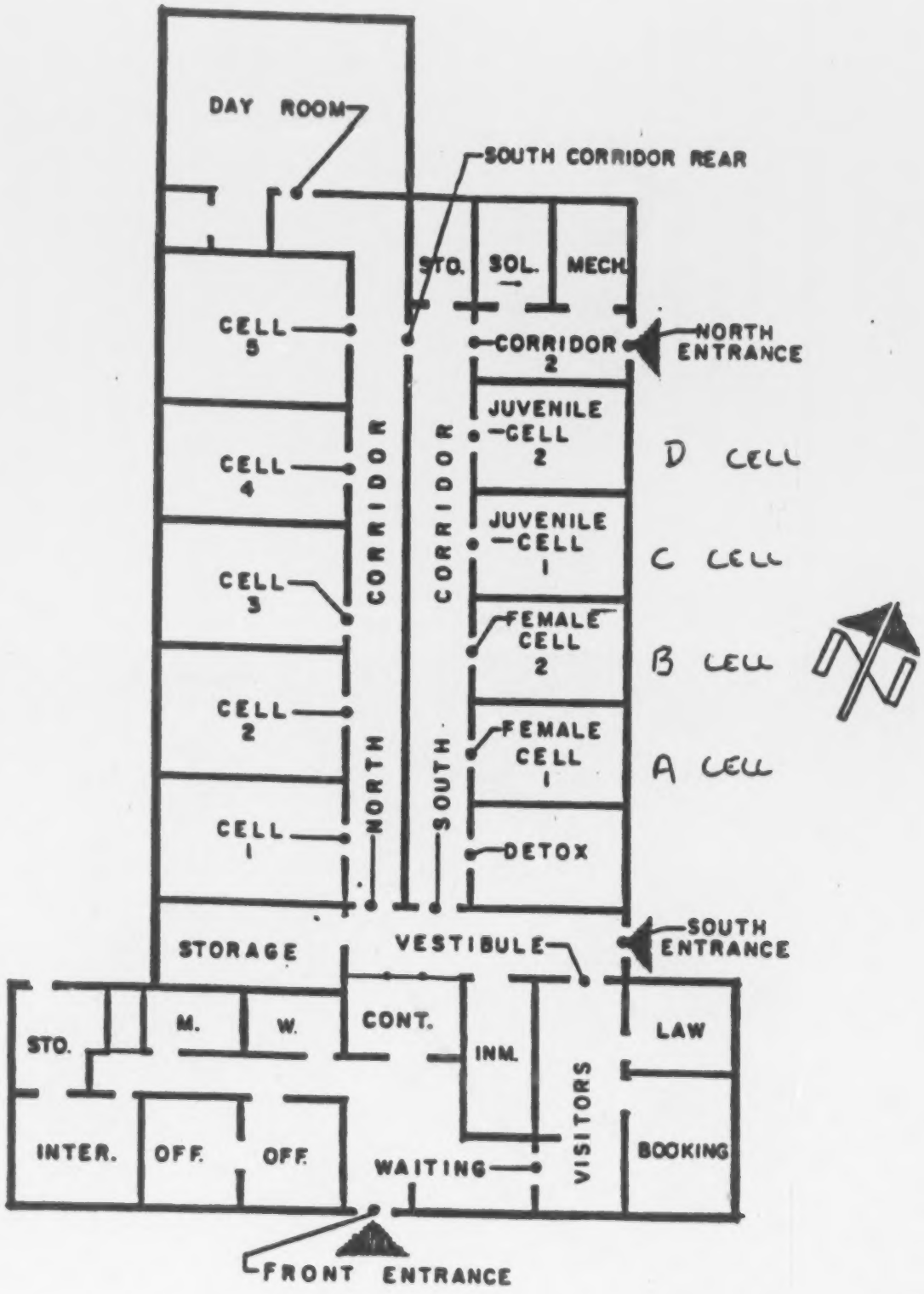
(WHEREUPON THE HEARING IN THE ABOVE CIVIL MATTER WAS CONCLUDED.)

CERTIFICATE

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE RECORD OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

/s/ B. Phipps 5-31-95
BARBARA DAVIS PHIPPS, CCR
OFFICIAL COURT REPORTER





KEY PLAN

WEST FELICIANA PARISH JAIL

Metz #2

#3

#4

EXHIBIT 2

UNITED STATES OF AMERICA
DISTRICT COURT OF THE UNITED STATES
MIDDLE DISTRICT OF LOUISIANA

ELLIS RATCLIFF, SR.	*	
VERSUS	*	No. 92,788
	*	Division "B"
WILLIAM M. DANIEL, ET AL	*	

****

The deposition of Randy Metz, a witness in the Federal Court Action, taken at the instance of the plaintiff, in the offices of Breazeale, Sachse & Wilson, located at 23rd Floor, One American Place, Baton Rouge, Louisiana, on the 22nd day of April, 1993, commencing at 10:30 A.M.

APPEARANCES:

EMILE C. ROLFS, III, ESQ. JAMES R. CHASTAIN, JR., ESQ. Breazeale, Sachse & Wilson One American Place, 23rd Floor Baton Rouge, Louisiana 70802	)	For Plaintiff
FREEMAN R. MATTHEWS, ESQ. Attorney-at-Law Suite 180 2800 Veterans Memorial Blvd. Metairie, Louisiana 70002	)	For Defendant

ALSO PRESENT: Steve Neal

* * *

[p. 88] through the window in the control room to them and they will open up his cell door, whichever cell he goes into. They know which cell he belongs to better than I do.

Q. Sure. Now, let me ask you this. Once you open this control door right here –

A. Yeah.

Q. – on the south corridor, are all of the – let's assume all of these cells here on the south corridor are occupied. Were the doors to them all left open?

A. No, sir, they are locked.

Q. They are locked? Okay. So you have to stand there and make sure he goes in the right cell and then what do you do?

A. And then I would turn – once he goes in the cell and closes the door, I would turn and come back out.

Q. Okay. And do you lock his cell door from the – from where you are at that –

A. No, sir. He pulls it shut, and it locks automatically.

Q. Okay.

A. And they will know it is locked in the control

* * *

EXHIBIT 7

WEST FELICIANA PARISH PRISON
INCIDENT REPORT

DATE: SEPTEMBER 29, 1991
TIME: 13:55
DEPUTY FILING REPORT: RANDY W. METZ
INMATES NAME: ELLIS N. RATCLIFF
CELL LOCATION: CELL D

ON SEPTEMBER 28, 1991 AT APPROXIMATELY 3:00 P.M. I WAS AT THE WEST FELICIANA PARISH JAIL TO TALK TO ELLIS N. RATCLIFF AN INMATE WHICH I HAD ARRESTED THE NIGHT BEFORE. DEPUTIES MARK DAIGLE AND JAMES BAILEY WERE ON DUTY AT THE JAIL AT THIS TIME. DEPUTY DAIGLE WENT TO CELL D TO GET THIS SUBJECT OUT AND BROUGHT HIM UP FRONT TO THE LAWYER'S ROOM FOR QUESTIONING. I MET WITH THIS SUBJECT, ELLIS RATCLIFF, AND TOLD HIM THAT I WANTED TO QUESTION HIM ABOUT A GRAY BUICK REGAL THAT HE WAS DRIVING ON U.S. 61 ON SEPTEMBER 27, 1991. I HAD A RIGHTS FORM WHICH I READ TO THIS SUBJECT HIS MIRANDA RIGHTS WHICH HE UNDERSTOOD AND SIGNED. I THEN READ THIS SUBJECT HIS WAIVER OF RIGHTS WHICH HE UNDERSTOOD AND SIGNED. I THEN PROCEEDED TO QUESTION THIS SUBJECT ABOUT THE VEHICLE IN WHICH HE GAVE ME A VOLUNTEERED STATEMENT. AT NO TIME DID THIS SUBJECT GET EMOTIONALLY UPSET NOR SHOW ANY SIGNS TO ME OF SUICIDAL TENDENCIES. I WAS WITH THIS SUBJECT FOR ABOUT AN HOUR IN WHICH HE GAVE ME A ONE PAGE STATEMENT. AT THE END OF OUR MEETING MR. RATCLIFF

TOLD ME THAT HE HAD TALKED TO ONE OF THE DEPUTIES AND ASK THEM IF HE COULD TALK TO THE SHERIFF ABOUT ATTENDING HIS GRANDMOTHERS FUNERAL. I TOLD HIM THAT IF I SAW THE SHERIFF THAT I WOULD TELL HIM. I THEN FOLLOWED THIS SUBJECT IN THE BACK TO THE RIGHT CORRIDOR FRONT AND WATCHED HIM GO DOWN THE HALL TO CELL D. THIS WAS AT APPROXIMATELY 4:00 P.M. AND THE SHIFT HAD CHANGED AT THE JAIL AND DEPUTIES SCOTT BRAUD AND STEVE NEAL WERE ON SHIFT. I THEN TURNED IN MY STATEMENTS AND LEFT AND WENT OVER TO THE ST. FRANCISVILLE POLICE DEPARTMENT. AT APPROXIMATELY 4:40 P.M. I CALLED THE WEST FELICIANA JAIL TO GET SOME INFORMATION FROM DEPUTY NEAL. DEPUTY NEAL ANSWERED AND TOLD ME TO GET DOWN TO THE JAIL QUICK THAT THERE HAD BEEN AN ACCIDENT. I IMMEDIATELY WENT TO THE JAIL AND DEPUTY NEAL TOLD ME TO GO TO CELL D. AS I ENTERED THE CELL I SAW DEPUTY BRAUD AND INMATE TRUSTEES MARSHALL NEWKIRK, JOHN HUBBARD AND MOSE ALLEN APPLYING CPR TO THIS SUBJECT. HANGING FROM THE CEILING LIGHT FIXTURE WAS A WHITE SHEET. AT THIS TIME THE AMBULANCE PULLED UP AND THREE EMT'S CAME IN. WE CONTINUED CPR FOR APPROXIMATELY TWENTY MINUTES AND THEN LOADED THIS SUBJECT INTO THE AMBULANCE WERE HE WAS TRANSPORTED TO THE WEST FELICIANA HOSPITAL.

OFFICER RANDY W. METZ

ST. FRANCISVILLE
POLICE DEPARTMENT

UNITED STATES OF AMERICA
DISTRICT COURT OF THE UNITED STATES
MIDDLE DISTRICT OF LOUISIANA

ELLIS RATCLIFF, SR.	*	
VERSUS	*	No. 92,788
	*	Division "B"
WILLIAM M. DANIEL, ET AL	*	

****

The deposition of Randy Metz, a witness in the Federal Court Action, taken at the instance of the plaintiff, in the offices of Breazeale, Sachse & Wilson, located at 23rd Floor, One American Place, Baton Rouge, Louisiana, on the 22nd day of April, 1993, commencing at 10:30 A.M.

APPEARANCES:

EMILE C. ROLFS, III, ESQ. JAMES R. CHASTAIN, JR., ESQ. Breazeale, Sachse & Wilson One American Place, 23rd Floor Baton Rouge, Louisiana 70802	For Plaintiff
FREEMAN R. MATTHEWS, ESQ. Attorney-at-Law Suite 180 2800 Veterans Memorial Blvd. Metairie, Louisiana 70002	For Defendant

ALSO PRESENT: Steve Neal

* * *

[p. 100] recall exactly what time it was. Seems like it was – reading through my report it was around 4:40 when I – I was talking to Steve Neal on the phone, but –

Q. Less than an hour later, huh?

A. Yes, sir, it would be probably less than an hour later.

Q. Was this a shock and a surprise to you?

A. Very much. Very much. Like I say, at first I thought it was an officer. But when I got there and seen – yes, it was a very shocking.

Q. Did you notice any unusual marks on his body, anywhere, bruises or contusions or any – any kind of marks of significance on his body at all while you were working on him or assisting the others in working on him?

A. CPR?

Q. Yes, sir.

A. I really – at the time I wasn't looking for any, and I don't recall any, no, sir.

Q. Let me show you an item that I've marked now out of order here Metz #3. When did you prepare your incident report, the – we have decided it was the following day. Do you [p. 101] remember what time it was?

A. No, sir.

Q. Okay. Were you on duty or off duty when you prepared it?

A. I probably was on duty. I don't recall who I was working for. I was possibly – probably on duty when I prepared it.

Q. I'll show you this item that I have marked for identification Metz #3 and ask you if that's a copy of the incident report we have been talking about.

A. Yes, sir.

Q. And we have identified the date that it was prepared by you. Can you tell me what time it was prepared?

A. This says 13:55.

Q. Okay. So that's – in civilian parlance that's 1:55?

A. Yes, sir.

Q. Okay. Now, in your incident report here you state that at no time did the subject get emotionally upset nor show any signs to me of suicidal tendencies; is that right?

A. Yes, sir. I wrote that.

[p. 102] Q. Did you type this yourself or did you dictate this to somebody?

A. Like I say, I usually type up all my stuff.

Q. You also say – skipping a sentence here, "At the end of our meeting, Mr. Ratcliff told me that he had talked to one of the deputies and asked them if he could talk to the sheriff about attending his grandmother's funeral." Do you know – did you ever determine which deputy it was he talked to?

A. No, sir. I never did. I never did ask him, or I don't recall him saying which deputy it was.

Q. Okay.

A. And I never did go ask any of the deputies.

Q. "I told him that if I saw the sheriff that I would tell him." Did you ever see the sheriff?

A. When I seen the sheriff he had already – the incident had already happened.

Q. Okay. Whatever happened to the white sheet hanging from the ceiling light fixture?

A. I don't know. I am sure the sheriff has it in evidence. I don't know.

* * *

EXHIBIT 9

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

ELLIS N. RATCLIFF, SR.	*	Civil Action
VERSUS	*	Number 92-788
WILLIAM N. DANIEL, ET A.	*	Section A

****

The deposition of ALFREDO SUAREZ, M.D., a witness in the Federal Court Action, taken at the instance of the plaintiffs in the Federal Court Action, in the offices of Breazeale, Sachse, & Wilson, 23rd Floor, One American Place, Baton Rouge, Louisiana, on the 19th Day of January, 1994, commencing at 10:35 A.M.

APPEARANCES:

EMILE C. ROLFS, III, ESQ., AND JAMES R. CHASTAIN, JR., ESQ. Breazeale, Sachse & Wilson 23rd Floor, One American Place Baton Rouge, Louisiana 70825	)	For Plaintiff
LLOYD F. SCHROEDER, ESQ. Usry & Weeks 2800 Veterans Memorial Boulevard Suite 180 Metairie, Louisiana 70002	)	For William N. Daniel, Scott Braud, Steve Neal and Randy Metz
GEORGE H. WARE, JR., ESQ. Ligon & Ware 1224 Woodville Street Clinton, Louisiana 70722 (NOT PRESENT)	)	For Parish of West Felicians

* * *

[p. 3] THE WITNESS, ALFREDO SUAREZ, M.D., HAVING FIRST BEEN DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, SO HELP HIM GOD, TESTIFIED AS FOLLOWS:

BY MR. CHASTAIN:

Q. Good morning, Dr. Suarez. I'm Sonny Chastain, and I'm here with Emile Rolfs and opposing counsel, Fred Schroeder. We're here this morning to talk with you about the Ellis Ratcliff matter and your knowledge of this incident and your medical opinion surrounding it. Can you first state your name and address for the record?

A. My name is Alfredo Suarez; home address, 3508 Sessions, Baton Rouge, Louisiana, 70816.

Q. Dr. Suarez, you're appearing this morning pursuant to a Notice of Deposition that was sent to you, which I'd like to introduce as "Exhibit A" to the deposition. Can you give us your educational background?

A. Yes, sir. I was graduated as a medical doctor in 1965 – it was August 13th – at the University of Caracas. That's in [p. 4] Venezuela, about maybe 1800 miles down south somewhere. I was very young then, and I didn't have a practice over there, so I came to train in the United States September 21st the same year. I went to the University of Miami for a while, and then I was recruited by LSU in New Orleans. I was admitted to a residency program in pathology at LSU Medical Center to function at Charity Hospital – that's 1532 Tulane Avenue – since 1966. That was May or June. And I stayed there through 1971. I did actually finish my residency in 1970. I stayed

with the university for a year teaching pathology as an instructor in pathology. 1971 I ran out of resources because they gave me only five years, so I went back to my home country. I became deputy coroner at the City of Caracas. Then it was only three million people there. I was affiliated with the university full time as an instructor in pathology and Chief of the department of Hematopathology at the Medical Center. Three years later – I had an American wife, [p. 5] so I had to come to the United States, and LSU actually called me again. That was June 14, 1973. Dr. James Freeman was in charge of the Earl K. Long pathology department there, which Earl K. Long is affiliated with the medical school. We are sort of ostracized and farmed out from the Medical Center, not because they didn't like us. They just function in different areas. And Jim Freeman quit or retired, and I became the chief of pathology. I'm an associate professor of pathology now, and I've been working with the local coroner's office here at East Baton Rouge Parish since 1975. I do autopsies for the surrounding parishes, like West Baton Rouge, Pointe Coupee. Sometimes I did Livingston Parish, Rapides Parish, Ascension. Sometimes I go to St. Tammany, but my home base is Earl K. Long Hospital. That's where I do most of my work.

Q. So you came on board to Earl K. in 1973?

A. Yes.

Q. And in 1975 you became Chief of Pathology at Earl K. Long?

[p. 6] A. Well, in '75 I was associate chief. Jim retired, I think, in 1980 or '82. I can't go that far back. I

have been in charge of the department for longer than 10 years.

Q. Okay. How old were you when you graduated from medical school?

A. Well, I was 22 years old actually, but I got my diploma soon after I became 23.

Q. Can you tell us what professional societies you are a member of?

A. I belong to the International Academy of Pathology, American Medical Association, the Southern Medical Association, the East Baton Rouge Medical Society, the Louisiana Pathology Society, the Greater new Orleans Pathology Society, the Latin-American Pathology Society, the Latin-American Foundation of Pathology in the United States. What else – I don't remember any more.

Q. Are you an officer or have you been officers in those professional associations?

A. I'm a fellow of the American Society of Clinical Pathologists. That's a [p. 7] country-wide United States society of pathology.

Q. Have you written any publications?

A. Yes, I have.

Q. And in what subject matters?

A. Well, it's been a while. We wrote a book on leprosy when I was at Carville. We used to do the lepers over there when nobody wanted to do it. I wrote a chapter on spinal fluid in the pathology book published here at Earl K. Long, but it's been sold throughout the

country in English. And I have written a number of articles on surgical pathology, meaning biopsies and cancer and the sort of thing like that, breast cancer, thyroid cancer. This is in the early '80s I did that, and I taught courses in forensic pathology at the University of Caracas back home, and I've lectured to the local D.A.'s people or the Assistant D.A.'s.

Q. You were teaching forensic pathology when you went back to Venezuela in 1971?

A. No. After they called me and specially invited me after I left.

[p. 8] Q. Do you currently lecture for the LSU Medical Center on pathology?

A. Very occasionally they call me to lecture on something sometimes without being invited. They just take me to a lecture room and sort of off the top of my head and look like a fool in front of the students.

Q. What type of seminars have you put on and for whom?

A. I have lectured the investigators for the State Police, the Assistant District Attorneys, the Venezuelan Society of Pathologists and a number of – I think State Police put out some to policemen from Central America on regular – mainly because I speak Spanish, so that's about it.

Q. And what do these seminars deal with, forensic pathology issues?

A. yes, Homicides mainly.

Q. How many hangings have you investigated?

A. I couldn't put a number to it, say – I've done probably more than 4,000 autopsies. I would say at least 40 of those have been hanging.

[p. 9] Q. And you do all the investigation for the Angola Prison hangings and deaths?

A. Yes.

Q. How many times have you testified in court as an expert in pathology?

A. I don't know. I would say 20 a year for about 15 years. Is that 300?

Q. Okay.

MR. CHASTAIN: I want to tender Dr. Suarez as an expert in forensic pathology. Do you have any questions you want to ask him, Fred?

BY MR. SCHROEDER:

Q. Doctor, are you board certified in forensic pathology?

A. No.

Q. Have you ever taken the board?

A. Oh, yes, 1971 – oh, no. That's the general pathology. Clinical and anatomical pathology, May 1971, I passed the same year.

Q. That's clinical and –

A. Anatomic pathology.

Q. What about Forensic pathology?

* * *

[p. 11] there. I did invite Jim Churchman from State Police because we worked together on several cases, so I said, "Jim, why don't we go over there." So we did go, and I looked at the body, who the body had already been embalmed and been autopsied by Dr. Laga, and they told me what the circumstances were, and I took some pictures.

Q. Now, did you measure the body?

A. We took some pictures and measured the ligature mark on this young boy.

Q. Did they tell you what the supposed cause of death was?

A. Well, they told me he hung himself at the prison.

Q. Did they tell you what he was hung with?

A. Yes. They told me it was bed sheets.

Q. Did they produce that bed sheet for you to look at?

A. No.

Q. Was anybody else with you other than Mr. Churchman?

A. Mr. Bolanger.

Q. And for the record, Mr. Bolanger is your [p. 12] assistant, is that right?

A. Has been my long-time assistant for 20 years.

Q. Can you describe the mark on the neck for us?

A. This was a ligature mark located around the cricoid cartilage, what you call the Adam's apple right here. Across from left to right it measured about 8.5 inches, I believe, total length and about a half an inch wide and a quarter of an inch deep, I believe. We did take pictures. I don't know if we – we still got those pictures somewhere with the ruler around it. Jim is very good at taking those pictures. He put the ruler around it.

It was – at the deep part of the ligature mark there's this woven or twisted pattern that I have been associated with a cord or a rope. I've not seen that with sheets ever. So my opinion given to Mr. Guerreiro, both orally and in writing, was that there was no way this was sheets. This is a pattern of a cord or a rope.

[p. 13] Q. And in your 25 or so years of practice, you've never seen a sheet make a mark like this?

A. No, I haven't.

Q. I'm going to show you some pictures that we've previously identified as "Laga A through E" and just show you pictures of – they're close-up photographs of the neck of the young Ratcliff – and ask you again, can you tell us a bit more about the linear nature of the mark?

A. Yes. This is a pretty horizontal mark on the neck, which again we don't – we don't see this too much in hanging. Hanging usually goes upward like a V-shape. This is sort of a horizontal deep or braided mark on the neck that I see more with strangulation than I see with hanging. I think the most peculiar identifying feature of this mark is the pattern. You see, there is a woven, if you

will, a twisted pattern on the abraded area at the deepest portion of the mark that a sheet just doesn't give you that. It's a perfectly woven rope in this – especially [p. 14] on the anterior aspect of the mark where there is more pressure.

If you look at it carefully, you will see that the mark is deeper anteriorly, that means almost at the midline, than it is on the side. Why? Because this is where the pressure is applied with more force. On the lateral aspect, the pressure and the depth of the mark is not that very visible here. In other words, it tapers a bit as it goes to left and right which is very typical of a strangulation. Why? Because the important thing to obliterate, block, is the air passages, not the blood. You see, there's a misconception out there, even among doctors, that the reason you die is because you block the circulation of blood. Actually, the cause of death is asphyxia, which is lack of oxygen, lack of air going into the body, so it takes a while for somebody to die of this. It's not an instantaneous death. And that goes for both, though. It goes for asphyxia by hanging or asphysixia by strangulation. The only time where you die [p. 15] instantaneously of a hanging is in the old days when they dropped you from way up there and you snap the spinal cord, and then you (witness snapped his fingers) die like this, but with this type of thing, it takes a few minutes.

Q. Doctor, either from your viewing of the body or from these photographs, do you see anything that looks like a knot mark? Was there a knot mark on the body?

A. We looked in the back, and we didn't see any noose or a knot mark.

Q. Did you see any other wounds on his body or markings on his body to suggest a struggle or bruises, that kind of thing?

A. I recall I saw something on the lateral aspect of the right arm, I believe, and we did take a picture of that area. I still don't know the significance of it, but there was a distinct bruise in that area.

Q. Let me show you a couple of pictures that have previously been identified as "Laga 1 through 5" and ask you to take a look at these and see if these are the markings

* * *

[p. 18] elbow also shows old injuries there. They're kind of irregular and hyperpigmented. I think the picture was taken for the benefit of that probably about a four-inch scar right there.

Q. If this were a sheet, what markings would you expect to see that's different than this?

A. Well, the sheets do give you a very irregular – a discontinued wide mark, because the sheet is not tight like a rope or a cord is, and the mark that we see is very regular. It goes every which way in the neck, because evidently it's not a continuous type of object that you use there with the solidity of a rope or a cord or a telephone cord or whatever. The sheets give you a very irregular mark. Sometimes sheet marks are difficult to see because again the pressure is sustained over a wider area of the neck, whereas a cord or any kind of rope will give you this type of pattern, deep and with the pattern of a woven

or twisted element in there. Sheets are more [p. 19] irregular, wide and not as easy to see. They're more subtle, and sometimes we have to work hard to find the cause of death when a sheet is used as a ligature.

Q. So you would certainly expect a sheet to not – or you measured this mark at a quarter of an inch. You would expect a sheet to be a lot wider than that, is that right?

MR. SCHROEDER: I'm going to object. I think he said a half inch. He said a half inch wide and a quarter inch deep.

A. (The witness did not reply.)

BY MR. SCHROEDER:

Q. Isn't that what you said, Doctor?

A. I have the measurement in the letter that I sent to Guerreiro. I may have said what you said. Let's see.

BY MR. CHASTAIN:

Q. You measured it –

MR. SCHROEDER: I'm referring to his earlier testimony.

MR. CHASTAIN: That's fine.

A. Yes. The ligature measured 8.5 inches in [p. 20] length. A deep impression was a quarter of an inch wide and an eighth of an inch deep. I may have mentioned a half an inch, but it's a quarter and an eighth. The depth is just the groove in there that measures – that indicates the pressure sustained or the pressure that was inflicted upon this fellow's neck.

BY MR. CHASTAIN:

Q. Okay.

A. But anyway, the question was based upon the type of mark that a sheet would leave. It varies, but it's a lot winder than this and more shallow and subtle, difficult to see.

Q. So in your medical opinion, it's more probable than not that this was not a sheet?

A. It certainly doesn't look like a sheet.

Q. And then based upon your review of the body, the fact that the marking is horizontal, there is ligature marking in the neck and no rope was produced, you would conclude what?

A. I think this would be more likely a homicide than suicide.

Q. That's all the questions I have, Dr. Suarez.

* * *

[p. 30] there. The coroner – when the coroner knows what he's doing. There's some of them that don't – would have a consultation, whether it's over the phone or whatever, with the pathologist, "Are you through? Were you thorough with the case? Can we dispose of the body?" So it is sort of a mutual, you know, agreement there. I've done it down here with Dr. Landry with communicating. I say, "Are you through with the case? Do you want me to wait for x-rays" or whatever, so it comes between those two, because the law is the law and the coroner is in charge. You've got to pretty much do what he says in some cases.

Q. So I guess from approaching from the other angle, the coroner and the forensic pathologist could delay the embalming of the body until further tests are run, if necessary; is that correct?

A. Yes.

Q. Do you know if there's any possibility that the sheet could actually be woven or braided into a ligature that would mimic or appear [p. 31] to be a rope?

A. There is a chance that a sheet can be cut into strips, rags of smaller dimensions and placed together, twisted very tightly, and it could become a rope, but you will have to have evidence that there was such a procedure done upon that sheet, but I don't believe that the full sheet can be made into this tight. There's no way that a sheet, even a single bed or a twin bed, whatever you call it. It cannot attain the small diameter of this ligature mark.

Q. And what is your opinion based on when you say that?

A. A matter of seeing cases or knowing just the physical nature of a sheet. I have to confess to you that I saw pictures of that sheet. I think you showed it to me that was shown to you, and I don't believe there was evidence there of blood stains or stripping, cutting the sheet or tearing it to make a rope. And just by knowing how these things work, I don't believe that you can make this kind of mark with the entire sheet twisted

* * *

[p. 37] question. I think Mr. Chastain's question was, "Is it more probable than not that it was a rope as opposed to a sheet? Was it more probable that it was not a sheet?"

A. (The witness did not reply.)

BY MR. ROLFS:

Q. For the record go ahead.

BY MR. SCHROEDER:

Q. Well, I'm going to ask you it this way. Are you testifying with reasonable medical certainty that it was more probable than not that this ligature mark that you observed on the man, on Mr. Ratcliff's neck, was caused by a rope or a cord as opposed to a sheet?

A. Yes.

Q. If we assume that at some point in time the man was hung from a light fixture by a sheet, whether it was after as you claimed that it was a rope or a cord that caused the mark that you see, would you expect to see another mark from the sheet if he was hung from the light fixture by the sheet?

* * *

EXHIBIT 10

SCHOOL OF
MEDICINE IN NEW ORLEANS
Louisiana State University
Medical Center
Earl K. Long Memorial Hospital
5825 Airline Highway
Baton Rouge, LA 70805-2498
Telephone: (504) 356-3361

Pathology

October 17, 1991

Richard C. Guerreiro, Jr.
Attorney
P.O. Box 3551
Baton Rouge, LA 70821

RE: RATCLIFF, ELLIS JR.

Dear Mr. Guerreiro:

This letter is intended as a formal consultation as requested by family and your office with regard to the body of the above referenced individual.

I visited the Miller and Daughter Funeral Home in Zachary, Louisiana where I had the opportunity to view the body of Mr. Ratcliff in the morning and afternoon of October 9, 1991. The body had been previously autopsied and properly embalmed, however, the changes present in the neck were still intact. The ligature mark on the neck is deep and measures 8.5 inches in length. It extends from the left lateral cervical region to the anterior and right lateral region. The deep impression in the neck measured a quarter of an inch wide and one eighth of an inch deep. On the anterior aspect of the mark, there is a strong

suggestion of a braided pattern which is more consistent with the material used being either a rope or a cord rather than sheets.

I am not totally familiar with the circumstances of death but I can suggest that the mode of death and the material used is not consistent with bed sheets and rather of either a cord or a thin rope. As you know photographs were taken and may be submitted to you at a later date.

Sincerely,

/s/ Alfredo Suarez, M.D.

AS:an

EXHIBIT 12

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ELLIS N. RATCLIFF, SR.	*	CIVIL ACTION NO. 92-788
VERSUS	*	SECTION "B"
WILLIAM M. DANIEL, ET AL.	*	

****

The deposition of EMIL M. LAGA, M.D., a witness in the Federal Court Action, taken at the instance of the Plaintiff in the Federal Court Action, in the offices of Breazeale, Sachse & Wilson, One American Place, 23rd Floor, Baton Rouge, Louisiana, on Friday, the 17th day of December, 1993, commencing at 4:40 p.m.

APPEARANCES:

JAMES R. CHASTAIN, JR., ESQUIRE -and- EMILE C. ROLFS, ESQUIRE Breazeale, Sachse & Wilson 23rd Floor, One American Place Baton Rouge, Louisiana 70825	)	For the Plaintiff

FRED SCHROEDER, ESQUIRE Usry & Weeks Suite 180 2800 Veterans Memorial Boulevard Metairie, Louisiana 70002	)	For the Sheriff of West Feliciana Parish and His Deputies

ALSO PRESENT: Cindy Mayers

* * *

[p. 4]THE WITNESS, EMIL M. LAGA, M.D., HAVING BEEN FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH, SO HELP HIM GOD, TESTIFIED AS FOLLOWS:

BY MR. CHASTAIN:

Q. Good afternoon, Dr. Laga. I am Sonny Chastain, and I am here with Emile Rolfs. We represent the family of Ellis Ratcliff, Jr. We are here today to take your deposition and to talk with you about your knowledge of the incident, his jail incarceration and hanging death.

Can you, first, state your name and address for the record?

A. My name is Emil M. Laga. The address is 2315 East Main Street, New Iberia, Louisiana, 70562.

Q. What is your occupation, Dr. Laga?

A. I am a forensic pathologist.

Q. How long have your been a forensic pathologist?

A. For about 20 years.

Q. Where are you employed?

A. I am employed in a number of different functions. One is in the forensic pathology area. I am employed by the coroners of the different parishes who request me to do a forensic autopsy on the cases that they submit to me. There are about ten [p. 5] parishes that I am covering.

Secondly, I am also, as a sideline, doing hospital work in a staff pathologist function at Iberia General Hospital in New Iberia. I also have a staff position at a clinical commercial laboratory in Lafayette that is called Acadiana Medical Laboratory.

Q. How many different coroners do you work for?

A. About ten.

Q. What parishes does that cover?

A. That would cover Lafayette Parish, Iberia Parish, St. Mary, St. Landry, St. Helena Parish, and then also West Feliciana, East Feliciana Parish, Livingston Parish, and there are some more. St. Martin Parish. That's roughly it. And then, occasionally, Acadia Parish, and a number of other parishes, occasionally. I mean, every so often, they have a difficult case.

Q. What is your educational background?

A. My educational background would be I am a physician. Originally, I am from Belgium. That is where I took my medical degree. I came to this country in '63. I had a rotating internship in pathology at Michael Reese Hospital in Chicago for [p. 6] one year, and then I moved to Boston. And in Boston, I was doing a number of things, one is to be in a rotating residency at the Peter Bent Brigham Hospital which is the main teaching hospital for Harvard Medical School studying pathology. As a second

line, we were also covering the forensic unit at Boston City Hospital, which is doing the work, the forensic autopsies for the coroner in the local county there, and also doing work in private laboratories as a sideline. I stayed there for two years in Boston, and then I moved to Washington, D.C. to the Clinical Center, the National Insitute [sic] of Health in Bethesda, Maryland, where I did continue a residency in pathology, now more working on the toxicology, the blood, the body fluid type of analyses aspect of the whole problem while continuing to work for coroners, and at that time, not really focusing then on commercial laboratory work. I was just doing the hospital and the forensic work.

After that, in '68 – I stayed for two years, and in '68, I came back to Boston to the old hospital, Peter Bent Brigham Hospital, and became a staff pathologist there setting up a training [p. 7] program for new physicians in the field of pathology. Okay? I trained about 25 people in about five years or so, still keeping the interest in both the commercial laboratory field and the forensic field in Boston. That was until '73.

And in '73, I came to Baton Rouge. Again, I did three things. One is to cover the forensic work for Dr. Landry, Hypolite Landry in East Baton Rouge Parish. Also, I covered the forensic work for most of the parishes around Baton Rouge, and I will mention some of them: Livingston, Tangipahoa, Ascension, Assumption, West and East Feliciana, the same kind of thing. Not the ones around Lafayette, the ones around East Baton Rouge. And then, also, I was a staff pathologist at what was called Doctors Hospital at the time. It is now Parkland. They may have changed the name again recently. And

then, I also was an assistant director at the commercial laboratory in town here on North Boulevard, which was called the Pathology Laboratory of Baton Rouge. And that was until '84.

In '84, I moved to the Lafayette area to continue three things, and basically that is what I already mentioned: To be the forensic pathologist [p. 8] for Lafayette Parish and the surrounding parishes over there keeping a number of those accounts in the East Baton Rouge area; doing staff work at the hospital, Iberia General Hospital in New Iberia; and doing work at the Acadiana Medical Laboratory, which is a commercial laboratory which does toxicology work, et cetera, et cetera, and some of the problems I do have in those different lines of work. And that is where I am at the present.

Q. Okay. So again, you have been doing this type of work for how long?

A. That type of work basically since '73 in Louisiana. So I am certified, board certified in Louisiana as a physician, and I am also board certified, of course, in pathology to do the kind of specialty work I am doing.

Q. You are board certified in pathology?

A. Yes, sir.

Q. And that is the standard –

A. That is the standard. I am also board eligible in the specialty for forensic pathology.

Q. Okay. Do you have to take continuing medical education type things?

A. You have to be on site there for six months. That [p. 9] is the last, you know, thing that has to be fulfilled, if I can ever find a six-month block to do that.

Q. Okay. Sir, as you know, we are here to talk about the details surrounding the death of Ellis Ratcliff, Jr.

A. Yes, sir.

Q. And I show you here a notice of deposition which you are appearing pursuant to; is that correct?

A. That's correct.

MR. CHASTAIN: We will attach this as "Exhibit #1" to the deposition.

BY MR. CHASTAIN:

Q. Sir, how did you first become involved with the Ratcliff matter?

A. The Ratcliff matter was brought to my attention by Ronald Chapman, who was the coroner at the time in '91 of West Feliciana Parish. Yes, sir, West Feliciana Parish.

Q. When were you called?

A. I was called on the 28th of September of '91 at 9:00 o'clock in the evening. 9:00 o'clock in the evening.

Q. [p. 10] And you have got some notes there in front of you that you are using. Can you just, for the record, tell us what those are?

A. This is two things. This is the original coroner's forensic autopsy report on the autopsy performed on Ellis Ratcliff, Jr. The date of autopsy was on the 28th of September, '91, at 11:00 o'clock at night, with the report date

being the 2nd of October, '91. There is also a supplementary report, which is dated 10-11-91, same subject, directed to the same coroner, Ronald Chapman, issued on 10-11-91, to clarify some of the matters that were not covered in the original report.

Q. What did you do? Tell us what took place the night of the 28th of September.

A. The night of the 28th of September, we performed off site – we do not go to the scene – off site at Miller & Daughter Funeral Home in Zachary the examination which occurred as follows. We first make a general inspection of the outside of the body which includes an identification of the body that is being brought to us, which, of course, has to be rather straight because we do not want to perform the surgical procedure on the wrong body,

* * *

[p. 33] embalmed, so the blood is, you know, rather decomposed after that procedure is done on the body. So fresh blood, good blood, I mean, blood that is usable for, you know, matching, would have been – you know, was in my possession and would have been available to them to do proper matching to blood stains on the sheet or whatever, or to do DNA studies, or whatever studies they possibly could, you know, at this time. But they did not request this.

Q. You never heard back about blood match either?

A. No.

Q. Who would have approved the body or sent it on for embalming?

A. The coroner.

Q. Now, Dr. Laga, you have described for us the characteristics of a marking by a sheet and by a rope. I am going to show you some pictures here of the neck of Ellis Ratcliff, Jr., and ask you, have you ever seen these close-up shots before?

A. I think I have seen them once. As I said, Mr. Cutler brought some of the pictures showing the neck, front and side views to me in '91, and –

Q. In your opinion, looking at the marking on this [p. 34] neck, is this more consistent with a bed sheet or a rope of some sort?

A. Well, what I can say is that, you know, the impression is quite linear. It is very well circumscribed on its top and on its bottom. It's deep. It, as I mentioned, is a quarter of an inch wide, which is rather, you know, consistent with what the picture shows here (indicating). And it also shows like irregular markings here (indicating), you know, at intervals which are equally spaced, and which, in my opinion, on the linearity of the upper and lower border of the imprint, the depth of the imprint, the pattern here is, you know, not what I usually see in a bed sheet. But then again, as I say, there may be an extreme type of, you know, possible contortion or whatever of the sheet. That is why I want to have the match with a casting. But that is what we usually see more often in the stranded rope, triple stranded, that kind of a thing, not an electrical wire which is going to be straightforward and double, linear all the way, without the pattern at regular intervals.

But again, this is, you know, imperfect. A [p. 35] perfect world would be to have a cast and a match of the actual materials used.

Q. Which we obviously don't have, and unfortunately, which was not done, which leaves us with relying on –

A. Also, you see that, especially on the right side, there's an abrupt stop to the imprint about here (indicating), about on the, you know, on the side of the neck, which is somewhat unusual suggesting that, you know, the pressure was mostly like on the left side, again up front because I didn't see much in the back here (indicating), which is like, you know, from here to about here (indicating), leaving all of this sort of uncovered, which is usually longer all the way, you know, circumferential, and then a knot imprint somewhere here, right or left, in your regular hanging, be it by rope or be it by sheet. That, I am missing that.

Q. In your 20 plus years of doing pathology work, have you ever seen a mark by a sheet like this?

A. No.

MR. CHASTAIN: I want to go ahead and mark the initial report as "Exhibit #2" and the

* * *

[p. 88] what the possibilities there are for, you know, a perfect match.

Q. Given the depth of the mark, the size of the sheet, and your prior experience with hangings, to you, it doesn't look like a sheet?

A. To me, it does not look like a sheet that gave the imprint here on the – well, not a sheet that I could manipulate such as to give me, you know, a convincing replica imprint on the skin of this person.

Q. And again, over your 20 plus years of experience, you have never seen a sheet or a cloth make a mark like that?

A. No. No, sir.

MR. CHASTAIN: That is all the questions I have.

MR. SCHROEDER: I have no further questions.

MR. CHASTAIN: For the record, in the deposition with Dr. Laga, we discussed certain photographs. The first group of photographs we discussed were the 8 1/2-by-11 blown-up

* * *

EXHIBIT 15

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

ELLIS N. RATCLIFF, SR.	*	CIVIL ACTION NO.
VERSUS	*	92-788
	*	
WILLIAM M. DANIEL, ET AL.	*	SECTION "B"
	*	

****

The deposition of ISAAC L. WASHINGTON, a witness in the Federal Court Action, taken at the instance of the Plaintiff in the Federal Court Action, at the State Police Barracks, 265 South Foster Drive, Baton Rouge, Louisiana, on Friday, the 17th day of December, 1993, commencing at 2:40 p.m.

APPEARANCES:

JAMES R. CHASTAIN, JR., ESQUIRE -and- EMILE C. ROLFS, ESQUIRE Breazeale, Sachse & Wilson 23rd Floor, One American Place Baton Rouge, Louisiana 70825	For the Plaintiff
FRED SCHROEDER, ESQUIRE Usry & Weeks Suite 180 2800 Veterans Memorial Boulevard Metairie, Louisiana 70002	For the Sheriff of West Feliciana Parish and His

ALSO PRESENT: Cindy Mayers
Deputies

* * *

[p. 14] A. The guys who stay in the bullpen, and then the guys in all of the rest of the dorms, they came back there.

Q. When you go in the bullpen, are you locked in? Can you come and go?

A. You can't – once you go in, that's it. You can't go back out.

Q. Until –

A. Until 10:00 o'clock.

Q. Okay, So you would have been in the bullpen –

A. Until 10:00.

Q. – all of the rest of that afternoon?

A. Yes, sir.

Q. Were most people back there in the bullpen, the people that were in the jail at that time?

A. Most all of them was back there.

Q. All right. What do you remember happened next?

A. I heard some noise like someone was beating on something like this (indicating), and I thought it was Mickey and them. I hollered up there, but it wasn't them because they were asleep, so I didn't pay it no attention.

Q. What time was this?

A. I don't know. It must have been – It wasn't that [p. 15] long after we went back there. I mean, it was – I can't really say. I don't remember.

Q. You say in your statement, "Sometime around 2:00 p.m., I went to the bullpen to watch the TV. I stayed in the bullpen until they passed out the sandwiches, but right before this, I heard something beating. I sounded like it was coming from Cell 4." Is that where Mickey was?

A. Mickey was in Cell 3 because I was in Cell 4, and Mickey was in the next cell, Cell 3.

Q. And you yelled for Mickey?

A. Uh-huh (affirmative response). Because I asked them what they were – I say, what y'all doing up there? And they were asleep.

Q. Okay.

A. So I didn't pay it no mind.

Q. It says in your statement that it was around 4:15 or 4:20. Would that be what you remember?

A. It could be.

Q. Okay. What did it sound like?

A. It sounded like – it sounded like somebody was beating on – You know, how you be beating on something? You get to tussling and you beat on something? That is what it sounded like to me [p. 16] because I thought – What I thought was Mickey and them was up there and was tussling or something, you know.

Q. What do you mean by "tussling"? They were just roughhousing?

A. You know, like they were in there playing, and they get to tussling and wrestling like.

Q. Right.

A. And that's what I thought it was when I hollered up there, but they were asleep, so I didn't pay it no mind.

Q. Did you ever find out what cell that was coming from, or what cell did you think that was coming from? If it wasn't from Cell 3 or Cell 4, did you know what cell it was coming from? Did you get up and try to look?

A. After they – You know, they were asleep. You know, I ain't paid it no more attention, you know.

Q. Okay. What happened next? What do you remember happening?

A. The guy – They came to bring our sandwich, and when they brought our sandwich, they went back up this side of the hall (indicating), and when they came down this side passing out the sandwiches,

* * *

[p. 24] Saturday, 2:00 o'clock that afternoon. Did you hear anybody else talking about him crying or being upset?

A. No, because the only person that could have seen in the cell was the cell that we was in because like they got the wall, and then the next cell to him, you can't see because they got a door like this (indicating), and they got a glass in it. And the other cells where we was in, they got bars. They couldn't see because of the wall, and then they was too further up.

Q. Okay. Did you ever hear anything about the trustees beating up on people?

A. It has happened before.

Q. What happens typically, or what do you know happened?

A. I mean, they beat up my uncle before.

Q. In the jail?

A. Yes.

Q. Why did they do that?

A. Because he – When he came in, he came in and was drunk, and they tried to fingerprint him and book him in and stuff, but they couldn't because he was drunk, and he was fussing, you know, with him, and [p. 25] so they brought him and put him in the cell. And then he was asking them for them to let him use the phone, and they wouldn't let him use the phone, and he threw an ashtray up the hall, and it broke, and they came back there and they beat him up. And they told me –

Q. The trustees?

A. Yes.

Q. What did he tell you?

A. Well, they told me not to talk to him. I told him that that was my uncle, you know, and when I say a drunk man, he was like a baby. You know, I wouldn't want them to jump on me.

Q. Okay. Any other time that you know of a trustee beating up on somebody? Was that a common occurrence up there?

A. I mean, like sometimes people come in, and they be kind of drunk or whatever, you know, and they get them

out to bring them up there, to try to, you know, rough them up, to try to settle them down because, I guess, they be drunk, and well, they get them to come up there.

Q. Did you ever hear of anybody doing anything like that to Ellis, Jr.?

* * *

[p. 62] down the hall for to go to the cell on both sides.

Q. And they have got tennis shoes in there and all kinds of –

A. Well, where you go and dress out, you take off all of your personal clothes, and you put on a jumpsuit and stuff.

Q. Is it kind of a junk room, for lack of a better word?

A. Mostly where you dress out, you know, and take off your clothes. More like a storage room for when they bring you to jail, they take all of your personal stuff and put it in there.

Q. Have you ever seen deputies permit trustees to beat up on people?

A. They beat up people – Trustees usually beat up people if they don't cooperate, if they come in there drunk, or if they give the police a hard time bringing them in, they will shake them down.

Q. The sheriff may not, or a deputy or jailer may not do it, but he may let the trustee do it?

A. Yes.

Q. You saw instances of that occurring?

A. Well, one guy – I didn't see it, but this guy, this Peck guy, he said they beat him up pretty bad,

* * *

Supreme Court, U.S.
FILED
AUG 1 1996
OFFICE OF THE CLERK

No. 96-34

(2)

In The

Supreme Court of the United States

October Term, 1995

ELLIS N. RATCLIFF, SR. and FRANCIS MAE TAYLOR,

Petitioners,

versus

WILLIAM M. DANIEL, ET AL.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF RESPONDENTS WILLIAM M. DANIEL, SCOTT BRAUD, STEVEN D. NEAL and RANDALL W. METZ IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

T. Allen Usry, Counsel of Record
John F. Weeks, II
Dorothy A. Pendergast
Usry & Weeks
2800 Veterans Memorial Boulevard
Suite 180
Metairie, Louisiana 70002
(504) 833-4600

Counsel for Respondents William M. Daniel, Scott Braud, Steven D. Neal and Randall W. Metz

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

10 pp

QUESTION PRESENTED

Were the defendant law enforcement officers properly granted summary judgment dismissing all claims brought against them pursuant to 42 U.S.C. § 1983 when there was no evidence implicating any of their individual acts or omissions in the alleged homicide by strangulation of the decedent, other than evidence of their mere presence in the same building at or around the time of his death.

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

TABLE OF AUTHORITIES..... iii

STATEMENT OF THE CASE..... 1

REASONS FOR DENYING THE WRIT..... 3

CONCLUSION..... 6

TABLE OF AUTHORITIES

Page

Cases

Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) 4

Statutes and Federal Rules

42 U.S.C. § 1983 ..... 1, 5

U.S. Supreme Court Rule 14.1(a) 1, n.1

Rule 56(c) of the Federal Rules of Civil Procedure 4

Rule 56(f) of the Federal Rules of Civil Procedure 5

STATEMENT OF THE CASE

On Friday, September 27, 1991, Ellis Ratcliff, Jr. ("Ratcliff") was arrested in West Feliciana Parish, Louisiana, and booked into the West Feliciana Parish Jail on charges of possession of a stolen motor vehicle. The next afternoon at about 4:40 p.m. another inmate discovered him hanging by a bed sheet from a ceiling light fixture in a locked cell of which Ratcliff was the only occupant. Efforts by jail personnel and medical emergency technicians to revive him were unsuccessful, and he was pronounced dead without ever regaining consciousness.

In September of 1992, his father brought the present lawsuit over Ratcliff's death; his mother subsequently intervened as a co-plaintiff. The complaint asserted claims under 42 U.S.C. §1983 based on alternative theories either that Ratcliff's death was a deliberate homicide in which the defendant law enforcement officers participated, or that his suicide was the result of constitutionally inadequate medical attention or policies for which they were liable.[1] Supplemental state law claims were also asserted.

Twenty-eight months after the original complaint was filed (and only after the plaintiffs had engaged in extensive discovery including nineteen depositions), defendant deputies Braud, Neal and Metz and their employer, West Feliciana Parish Sheriff Daniel, moved for

---

[1] In their Petition, the plaintiffs contest only the dismissal on summary judgment of their homicide claims brought under 42 U.S.C. §1983. The alternative suicide claim has been abandoned and will not be discussed herein. *See U.S. Supreme Court Rule 14.1(a).*

summary judgment. The District Court granted summary judgment dismissing all federal claims with prejudice and all state law claims without prejudice. (Pet. App. 3)[2]

The Fifth Circuit Court of Appeals affirmed the dismissal by the District Court in a brief unpublished opinion, concluding that there was "no summary judgment evidence sufficient to create a fact issue upon which a finding of constitutional violation *on the part of any of the defendants* could properly rest." (Pet. App. 2, *emphasis added*)

The statement of facts in the Petition contains a startling omission in light of the above cited and emphasized opinion of the Court of Appeals. Nowhere does the Petition suggest a single act or omission by any of the respondents, disputed or otherwise, which would implicate any of them in the alleged homicide. Rather, petitioners' argument is based entirely upon the mere fact Deputies Braud, Neal and Metz were in the same building with Ratcliff at or around the time of his death.

---

[2] In fact, petitioner's subsequently filed a separate complaint in the Middle District of Louisiana under only its asserted diversity jurisdiction, raising state law claims with respect to Ratcliff's death.

REASONS FOR DENYING THE WRIT

I. Petitioners' statement of "Question Presented" identifies no issue calling for review by this Court.

The decision below is not in conflict with any decision of any other Court of Appeals or inconsistent with any decision of this Court. No special or important issues are raised by the Petition, and further review is not warranted. At most, the Petition asserts the misapplication of a properly stated rule of law to the facts in the record; as shown in the following section, even that argument is illfounded.

II. The Fifth Circuit opinion correctly applied the summary judgment standards of Rule 56 of the Federal Rules of Civil Procedure to the factual record before it.

At page 8 of their Petition, petitioners argue that in responding to the motion for summary judgment they "submitted evidence which suggests a violation of Ratcliff's constitutional rights." This argument wholly ignores the basis for the rulings in both lower courts. There was no credible evidence submitted in opposition to the motion which in any way implicated **these named defendants** in the alleged homicide. To the contrary, the uncontradicted evidence shows that Deputy Metz had left the jail more than a half hour before the death occurred and that Sheriff Daniel had not even been present in the jail on that date. The remaining two defendants, Deputies Braud and Neal, were on duty in the jail at the time the hanging was reported, but there is no evidence that either of them had any contact with Ratcliff

at or near the time of his death. Petitioners' conjectures as to the possible involvement of these individuals cannot subvert a properly filed and supported motion for summary judgment.

The summary judgment granted and affirmed below in favor of these law enforcement officers is in full accord with this Court's opinion in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986). In *Celotex*, this Court held that summary judgment was properly granted to an asbestos manufacturer where, in opposition to the manufacturer's motion for summary judgment, the plaintiff produced no evidence that the defendant was the manufacturer of the asbestos product to which the plaintiff had been exposed. The following excerpt from that opinion is equally applicable to the present case:

> "In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be 'no genuine issue as to any material fact', since a complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial."

(477 U.S. at 323, 106 S.Ct. at 2552, 91 L.Ed. 2d at ___.)

Viewed in the light most favorable to petitioners as the non-moving parties, the evidence presented by them in opposition to summary judgment, at most, creates a genuine issue of material fact as to whether Ratcliff's

death was a suicide or a homicide. However, it is not the function of the trier of fact in this case to determine only whether a homicide did or did not occur. An essential element of the petitioners' case is proof that the law enforcement officers named as defendants in this case were personally involved in bringing about that homicide in some fashion. Despite abundant time for discovery, petitioners are still unable to point to a single fact implicating any of these officers other than their physical presence somewhere in the jail at or close to the time Ratcliff died there.

Petitioners do not complain that they were afforded inadequate time for discovery to oppose the summary judgment motion, nor did they ever seek relief under Rule 56(f) of the Federal Rules of Civil Procedure by filing any affidavit setting forth reasons they were presently unable to justify their opposition. Just like the plaintiffs in *Celotex* who produced some evidence of injury in opposition to summary judgment, but no credible evidence associating the named defendants with that injury, petitioners have failed to produce opposing evidence with respect to the ultimate issue of their case. Summary judgment was properly granted dismissing their claims under 42 U.S.C. §1983.

CONCLUSION

For the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

T. ALLEN USRY, Counsel of Record
JOHN F. WEEKS, II
DOROTHY A. PENDERGAST
USRY & WEEKS
2800 Veterans Memorial Boulevard
Suite 180
Metairie, Louisiana 70002
(504) 833-4600

Counsel for Respondents
William M. Daniel, Scott Braud,
Steven D. Neal and Randall W. Metz